A *VADE MECUM*, OR, TABLE.

Containing the Substance of such

STATUTES;

WHEREIN

Any one, or more JUSTICES of the Peace are inabled to Act, as well in the Sessions, as out of the Sessions of Peace.

Together

With an *Epitome* of Mr. *Stamford's Pleas of the Crown.*

The Seventh Edition corrected, and amended.

By WA. YOUNG Esquire.

Justitia est Basis, & fundamentum Reipublicæ.

LONDON,

Printed by *John Streater*, and are to be sold by *H. Twyford*, *Tho. Dring*, and *John Place*.

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TO THE READER.

THis Table, being above fifteen years ſince, drawn out of ſuch *Statutes*, as concern the power of one, or more Juſtices of Peace, out of the *Quarter-Seſſions*, was then intended onely for an help to the Memory. A Copy whereof, coming into ſome unknown Hand, is lately Printed at *Cambridge*; wherein are ſo many Faults, either by the negligence of the *Tranſcriber*; or careleſneſs of the *Printer*; that it was thought requiſite to correct the ſame.

The Uſe of it is thus.

Firſt, It ſets down the power of one Juſtice of Peace alone by himſelf, without any other, to joyn with him.

Secondly, The power of two Juſtices of Peace, *&c.* In both which you have;

Firſt, The Offence:

Secondly, The *Statute*, againſt which the Offence is committed.

Thirdly, What Conviction is requiſite; Whether upon View, or by one, or two Witneſſes; or by Jury.

Fourthly, In the other Column is set down the punishment, to be inflicted for that Offence.

Note, that where you find this *character* (8) set after any *Statute*, it sheweth you, that that *Statute* doth stand upon continuance; but if you find this second *Figure* (8) it noteth, that such a *Statute* is now either expired, or repealed:

Lastly, you have many Blanks left for the adding of such other things as are omitted, or may hereafter, by any new *Statute*, be committed to the care of the Justice of Peace.

The

The *Præcognita.*

1. ONe Justice of Peace, *alone, cannot take any Inquisition, unless Power be given unto him by* Statute M. 7. Edw. 4. *fol.* 18.

2. *Where the Matter is to be tryed by Witnesses, it seemeth that two Witnesses are requisite. Otherwise it is, where the Tryal is by* Jury *of twelve; for there one Witness sufficeth: yea, there many times Witnesses are not necessary.* Plod. *Com. fol.* 12. a.

3. *In all Cases, where the Offence is found upon Enquiry, those* Justices *have authority to make out Process against the Offenders, untill they have payed the Fine, and then to deliver them, upon payment of it; or upon Sureties given for it. Otherwise the* Justices *may receive the Traverse of the Offenders,* Dalt. *pag.* 127. *But this must be understood in such Cases, whereof they have power to hear, and determine; and not upon Enquiry only: as* Stat. 1 Eliz. 23. Eli. &c.

4. *The Tryal, by Examination of Offenders, or Witnesses, is not permitted unto* Justices; *but onely, in Cases, where either the* Statutes *do generally refer the Tryal to their Discretions; or do else especially authorize them to take Examination.* Dalt. *pag.* 20. 126.

5. *In all Cases where the* Justices of Peace *may hear, and determine, or punish Offenders by their own Confession, or by Witnesses, there the* Justices of Peace *may grant out their* Warrants *against the Of-*

fenders, and may thereupon proceed to determine the Offence. Dalt. *pag.* 127.

6. *A* Juſtice of Peace *cannot binde over an Offender againſt a Penal Law to anſwer his fault* Lamb. *pag.* 187. *But he muſt firſt be Indicted,* Lamb. *pag.* 188. *The Statute of* 1 Edw. 6. 1. *accords.*

7. *An* Infant *is bound by every* Statute-*Law, if he be not excepted in the* Statute, Dyer, 104. p. 13. *And ſo are* Women-Covert, Coke, lib. 11. fol. 61. b. & 63. b. Dr. Foſter's *Caſe.* Sed quære. Broke, *Title* Impriſonm. contra.

8. *Whereſoever a* Juſtice of Peace *hath power given him, by any* Statute, *to binde over any man, or to cauſe a man to do any thing: if ſuch perſon, being in his preſence, ſhall refuſe to be bound, or to do ſuch a thing, it ſeemeth ſuch* Juſtice *may ſend ſuch a perſon to the Gaol, there to remain, untill he ſhall perform the ſame.* Dalt. pag. 297.

7. *Where ſome* Statutes *do Enable* Juſtices of Peace *to hear, and determine, by the general word* Examination, *without ſhewing of what Perſons, it ſeemeth, that they may examine the Parties as other Witneſſes.* Lamb. pag. 535, 536. *And theſe* Examinations *ought always to be upon Oath, becauſe the Tryall thereof dependeth upon them.* Lamb. pag. 536.

10. *If, in any* Statute, *it be ſpoken of* Proof *generally: albeit there be many* Proofs *in Law, yet it ſhall be underſtood of the beſt* Proof, *that is by* Jury. Coke, lib. 6. fol. 20. *in* Gregorie's *Caſe.*

11. *This word* King *doth include all his Succeſſours, becauſe the King cannot dye, in reſpect of his*

his Political capacity, Coke, lib. 6. fol. 27. *in the Case of Souldiers.* But *see Statute* 1 Mar. Parliam. 2. c. p. 9. *it hath been doubted.*

12. *All the Articles, within the Commission of the Peace are both enquirable, and determinable, at any special Sessions of the Peace.* Lamb. *pag.* 623. *And also all such* Statutes, *as use the word* Sessions, *indifferently, without adding* General, *or* Special. *Lamb.* pag. 624.

13. *By the* Statute *of* 2 *H.* 5. cap. 4. Justices of the Peace *may, if they see cause, keep more, then four* Sessions *yearly.* Lamb. *pag.* 623.

14. *Note, that the* Statute *of* 4 *H.* 7. 12. 33 *H.* 8. 10. 37 *H.* 8. 7. *with the annexed* Proclamation, *do give further power unto* Justices of the Peace, *in some Cases, then you shall find expressed, either in their* Commission, *or the particular* Statutes *themselves.*

15. *Note also, That* Justices of the Peace *may enquire of such Trespass, whereupon any may have an* Action upon the Case, *for the Trespass, or Deceit: for in the end of an* Action upon the Case *these words be rehearsed,* Contra pacem nostram. *Fitz.* Justice of the Peace, *fol.* 12. b.

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Inn-keepers

1 INkeepers, Alehouse-keepers, or Victuallers, selling lesse then one quart for a peny.

Stat. 1 *Jac.* 9.
21 *Jac.* 7.

One Witness, view, or confession.

And after confession by the Delinquent, his Oath may convict others.

21 *Jac.* 7.

Twenty shillings to be levied by distress, and sale after six dayes, and for want of distress, to be committed untill payment.

And disabled for 3. years for keeping any Ale-house, by 21 *Jac.* cap. 7.

If the Constable or Church-warden do not levie the Penalty, or shall not certifie the want of distress within 20 dayes, he forfeits 40. s. to be levied by distress, and sale, *ut supra*.

---

2 Inkeepers, Ale-house-keepers, or Victuallers, suffering any of the same Parish to continue tipling in their Houses.

Stat. 1 *Jac.* 9.
21 *Jac.* 7.
One Witness, or view.

Ten shillings to be levied by distress, *ut supra*.

And disabled, *ut supra*.

Constable, *&c.* punished, *ut supra*.

---

3 If any Inn-keeper, Alehouse-keeper, Victualler, or Taverner, suffer any, wheresoever his habitation be, to continue tipling in his House.

1 *Jac.* 9.
21 *Jac.* 7.
1 *Car.* 4.

Ten shillings to be levied by distress, and for want of satisfaction, in six dayes, to be sold, restoring the overplus, and for want of distress, to be committed till payment.

And disabled, *ut supra*.

21 *Jac.* 7.

Two Witnesses or view.

Note, No man may distrain in the high-way, Stat. *Mar. Anno* 25 *H.* 3. c. 15.

---

4 If any be convicted for being drunk,

4 *Jac.* 5.

21 *Jac.* 7.

One Witnes or view.

If any Alehouse-keeper be convicted of drunkennes, he is disabled for three years to keep any Alehouse.

21 *Jac.* 7.

This conviction of drunkenpess must be within six moneths of this offence.

4 *Jac.* 5.

First, to pay five shillings to the Church-wardens, where, *&c.* within one week after conviction, or else to be levied by distreis and sale, and for want of distresse, to sit in Stocks six houres.

2 To be bound with two Sureties in ten pound to be of good behaviour.

If the Constable levie it not, he forfeits ten shillings to the poor, to be levied, *ut supra.*

---

5 Townsmen, or others which shall remain tipling in any Inne, Alehouse, or Victualling house.

4 *Jac.* 5.

21 *Jac.* 7. to tipple.

One Witnes or view.

Three shillings four pence to be levied by distress, after one weeks neglect of payment, or to sit in Stocks four houres. And the Alehouse-keeper disabled three years, by

21 *Jac.* 7.

Constables neglect, forfeit ten shillings.

---

6 Finding any flesh to be dressed or killed in any common Victualling-house in

To seize it, and to give it to the poor.

in time of Lent,
1 *Jac.* 29. 8
3 *Carol.* 4.
Upon view.

---

7 Offenders in case of forcible entries.
5 *Ri.* 2. *cap.* 7.
15 *R.* 2. *cap.* 2.
8 *H.* 6. *cap.* 9.
31 *Eliz.* *cap.* 11.
21 *Jac.* *cap.* 15.
M. 21. *H.* 6. *fol.* 5.
Upon view onely.

Imprisonment, fine, and to remove the force, & upon pledges found for the fine to deliver them.
But he cannot make restitution without inquiry, *Dalt.* 44, 45.

---

8 Make restitution of possession unto Tenants for years (Copy of Court Roll) Gardians by Knights service, Statute Merchant, Staple, or Tenants by them, so holden in case of forcible entries.
21 *Jac.* 15.
By enquiry onely, not else in any case.

In this case of restitution he may not upon the enquiry fine or commit them.
But he cannot make restitution without enquiry.
Dalt. 44, 45.

---

9 Enquire of the defaults of Sheriffs, in not returning sufficient Jurors, to enquire of forcible entries.
8 *H.* 6.

Fine twenty pounds

8 *H.* 6. 9.
By Indictment.

10 Keepers of Play-houſes, & of unlawful games.
32 *H.* 8, 9.
Upon view.
Stat. 12. *R.* 26. Kailes.
11 *H.* 4. 4. Hand-ball, Foot-ball, Dice, Coits, bowling.
17 *Ed.* 3, 4. hand in, hand out, Dice, Tenice, claſhe, quickboard. *Weſt.* Preſidents, 2 part *fol.* 85. ſaith, that all games, except ſhooting, are unlawfull.

Impriſonment untill he become bound by Recogniſance to keep no more.
The penalties of the former Statutes, are onely repealed, by 33 *H.* 8, 9.

11 Such as ſhall play in ſuch houſes.
33 *H.* 8, 9.
Upon view.

Impriſonment untill he become bound by Recogniſance to play no more. and to pay 6 s. 8 d. to be recovered in quarter-Seſſions, by 31 *Eliz.* 5.

12 Such as out of Chriſtmas ſhall play at unlawfull games any where.
33 *H.* 8, 9.
Finding

Impriſonment, and bound by Obligation to the Kings uſe to play no more.
Pain twenty ſhillings by Indictment in the quarter-

Finding or knowing the same.

Sessions.

31 *Eliz.* 5.

---

13 Such as meet or assemble out of their own Parish upon the Lords day, for any sports, or any pastimes whatsoever.

Or such as use Bear-baiting or Bull-baiting, or any other unlawfull exercise, or pastime in their own Parish upon the Lords day.

1 *Car.* 1. 8.

One Witness, view or Confession.

Three shill: four pence to the poor, where, *&c.* to be levied by distress and sale, restoring the overplus, *&c.* and for want of distress, to sit in the Stocks 3. houres.

To be questioned within one moneth.

West. Presidents, 2 part, fol. 85. saith, All games except shooting are unlawful.

---

14 To certifie into the Kings Bench, the names of such as shall absent themselves from the Church 12. moneths.

27 *Eliz.* 7.

To be bound in the Kings Bench in 200 pound to be of good behaviour.

If he come not then to Church in 12 moneths, he forfeits his Recognisance. *Dalt.* 163. *Lamb.* 114, 115. 127. 130.

---

15 Such as repair not to the Church, Sundayes and Holidayes.

1 *Eliz.* 2.

3 *Jac.* 4.

One Witness.

Twelve pence for every default to be levied by distress, and for want of distress, to be committed to some Prison until the same be payd.

16 Who

	The Stocks is a Priſon, *Dyer 99. pl. 60.*
16 Whoſoever ſhall wilfully diſturb any Preacher allowed, in his open Sermon, or collation. 1 *Mar.* ſeſſ. 2. c. 3. Or ſhall reſcue any offender, *Ibid.* Two Witneſſes or confeſſion.	To be committed unto ſafe keeping, and within 6. daye (if upon Examination) that Juſtice and one other ſhall finde him guilty, then to be committed for three moneths.
17 A Juſtice of Peace muſt within 14 dayes after the diſcovery of any *Agnus Dei*, Croſſes, Pictures or Beades, declare the ſame to ſome of the privie Councel. 13 *Eliz.* 2.	Præmunire.
18 To take the ſubmiſſion of any Jeſuite or Prieſt in writing, within 3 dayes after his landing in *England*, and to give him the Oath of Supremacy. 27 *El.* 2.	And to certifie the Oath, and ſubmiſſion into the Chancery within 3 months, upon pain of an hundred pounds. See *Sect.* 21.
19 Require any ſeditious Sectary, if he ſhall not conform within three moneths	If he refuſe to abjure, it is Felony, but this abjuration muſt be made in o-

moneths after his conviction to conform, and in default thereof to require him to abjure the Realm.

35 *Eliz.* 1. 8.

pen Seſſion.

---

20. Require any Popiſh-Recuſant above 16 years of age, which ſhall travail five miles from his dwelling, without licence (if he have leſſe then twenty Marks freehold *per annum*, or be not worth forty pound in goods) to conform,

35 *Eliz.* 2.

If he ſhall not conform within three moneths, then two Juſtices of the Peace, or Coroner, may require him to abjure, and muſt certifie the abjuration at the next Aſſiſes, and if he then refuſe to abjure, it is Felony without Clergy.

---

21. To give the Oath of Supremacy to any Prieſt or Jeſuite, that ſhall within three dayes after the landing ſubmit himſelf, and under his hand acknowledge his obedience unto the Kings Laws in cauſes of Religion.

27 *Eliz.* 2.

And to certifie the Oath and ſubmiſſion within three moneths into the Chancery, *ſub pœna* 100 *li.*

---

22. Such as ſhall curſe or ſwnar, if it be complained of within twenty dayes.

21 *Jac.* 20. 8.

Twelve pence to be levied by diſtreſs, or to ſit in the ſtocks three hours.

If he be under twelve years of age to be whipped

Two

Two Witnesses or Confession.

Jer. 5. 7. *Thy Children have forsaken me, and sworn by them that are no gods,* &c.

Matth. 5. 36. *Swear not by thy head, for thou canst make no hair white or black.*

by the Parents or Constable.

Faith the greatest Oath, *Plutarch in vita num. Pompilii.* pag. 84.

1 Command Hue and Cry to be made after Felons, Stat. *Wincheſt.*

2 Set Watches between the Feaſt of Aſcenſion and Michaelmas, *ibid.*

Cauſe high wayes to be enlarged.

4 Chuſe two Conſtables in every hundred, Statute *Wincheſter.*

5 Require Conſtables to preſent ſuch as lodge any ſtrangers in any upland Towns, for whom they will not anſwer, Stat. *Wincheſt.*

Quare. If they ſhall receive them to the houſe before nine of the Clock at night.

To be fined upon enquiry, and authority was given to one Juſtice or Peace, by expreſs words in the old Commiſſion of the Peace.

Tamen Quare, ſee *Præcognita.* 1.

Hundreds were derived out of Counties, and in every hundred was ordained a Conſervator of the Peace, who is called the Conſtable: after Burrows were made, and in them a Conſervator called a petty Conſtable, and in ſome places Burrow-heads. *Ir.* 12. *H.* 7. fol. 18. But by Stat. *Winch.* Juſtices may chuſe Conſtables in every Hundred.

24 To inform ſome of th

the privie Councel within twenty eight dayes after the discovery of any Jesuite or Priest, and to take a note of that under their hands,

27 *Eliz.* 2.

Two hundred Marks.

25 If any above the age of eighteen years shall stand presented or indicted for not coming to Church. Or if the Minister, petty Constable, and Churchwardens, or two of them, shall complain of any suspition.

7 *Jac.* 6.

Require him to take the Oath of Allegiance; which if he refuse, he is to be committed untill the next Sessions or Assizes.

26 If any suspected to be a Jesuite or Priest, shall refuse to answer directly, whether he be a Priest or Jesuite.

35 *Eliz.* 2.

To be committed without bayl, untill he will answer directly.

27 To take information of him that will give notice of Masse to be said within three dayes after the offence.

3 *Jac.* 5.

See præcognita. 8.

28 Persons riding armed.
Stat. North:
2 *Ed.* 3. 5.
Upon view.
As to wear a Coat of Mail secretly. *Pult. de P.* fol. 3. sect. 8.
Or to carry Daggers and Pistols.
Cook lib. 5. fol. 7.

To take away their Armour, and to be imprisoned at the Kings pleasure. Or he may enquire and praize their Armour by a Jury, *Lamb.* 169. 171. 181.
Justices of Peace may also command Weapons to be taken away from such prisoners as are brought before them, *Dalt.* p. 30.

29 Trespasses in Orchards, Woods, Rails, Corn, &c.
43 *Eliz.* 7.
One Witness.

To give satisfaction or to be whipped.
The Constable to be committed untill he procure such to be whipped.

30 Offenders in making of Tyle,
17 *Ed.* 4. 4.
By Indictment, or two Witnesses.

For every hundred of plain Tiles, five shillings.
For every hundred of roof Tiles, six shillings eight pence.

31 Having Tentors for Cloth.
39 *Eliz.* 20.
43 *Eliz.* 10. 8
4 *Jac.* 2. 8
21 *Jac.* 18. 8
Upon view.

1 Any Justice of Peace or head Constable upon view may deface them, for Stat. 39. *Eliz.* is made to extend to all places within the Realm, by 43 *Elit.* 10.

2 He may sell them, and give the money to the poor.

32 No Fayres or Markets to be kept in any Church, or Church-yards, Stat. *Winch.* 13 *Ed.* 1.	Fine, see Sect. 23.
33 Souldiers purloyning Horses, Harness, or Armour, 2 and 3 *Ed.* 6 2. Complaint and proof.	Commitment untill he make satisfaction.
34 Sheriffs entring of more plaints then one for one cause. Or if the Plaintiff put not in security to prosecute his action, *Lamb.* 210. 11 *H.* 7. 15. By examination of the Shire Clerke, and Plaintiff.	Forty shillings for every plaint, and the Justice of Peace must certifie it into the Exchequer, upon pain of forty shillings. Process as in Trespass:
35 Bailiffs of the Hundred, for not warning the defendant in County Courts. 11 *H.* 7. 15. Bailiffs to be convicted upon their examination: *West.* 2. 26. Bailiffs to be sworn.	Forty shillings for every offence, *ut supra:* *Quære*, Whether he must be the sworn Bayliffe:
36 Bayliffs and others gathering	

gathering the sheriffs amerciaments, before they are examined by two Justices of the Peace.

Or if the Bayliff be not sworn.

Or shall take more then is Extreated.

11 *H.*7.15.

Upon examination convict.

Forty shillings for every offence, process as in trespass.

Note, the Hundreds, Bailiff must serve the County Process.

---

37 He that shooteth in any Gun at any thing at large, (except it be within five miles of the Sea.)

33 *H.*8.6.

Upon examination and proof.

And except he be licenced to kill *Hawks* meat.

1 *Jac.*27. 8.

The Kings Officers may use and carry Daggers and Hand-guns in execution of Justice, *Cook* lib.5. fol.72.

Ten pound to be estreat into the Exchequer, and imprisonment untill payment.

He that hath 100 pounds *per annum*, may seise any short Gun, or Crossebow.

33 *H.*6.

Or any Gun or Net with which any shall kill any Dear or Conies, the offender not having forty pounds Land *per annum*, or not worth two hundred pounds in goods, or any severall grounds for Conies worth forty pound *per annum*, and also he may seise any Cony-dogs or Ferrets, of such by

3 *Jac.* cap.13. 8.

---

38 Such as are suspected to

Committed untill the

to be robbers, and taken by the Watch,
5 Ed. 13, 14.

Assizes, or by 34 Ed. 3, 1, 2. to be bound to the good behaviour.

39 To put in Overseers and Conservators of Rivers, and survey them,
17 R. 2. 9.

40 If any Horse be stollen and sold in open Market, the owner or his Executors may within six moneths after such Horse is stolleu, make his claim before a Justice of Peace, near the place where the Horse is found, so as proof be made within forty dayes after, by two Witnesses upon Oath, before such Justice. And such sale taketh not away the property of the Horse, but the party may have his Horse again upon payment of so much money as the party who bought it shall depose it cost him.

35 Eliz. 12.

41 Such as take Salmons between the eighth of *September*, and the eleventh of *November*.

Or at Mill pooles from the midst of *April* unto Midsummer.
West. 2. *An.* 13 *Ed.* 1. 46.
13 R. 2, 2.
Lamb. 190.

Upon view. or by Indictment, By 17 R. 2. cap. 9. 42.

1 Burn the Nets.
2 Imprisonment one quarter of a year.
Lamb. 190.
Under Conservators shall have half the fine upon Indictment,

by 17 R. 2. cap. 9.

42 Such as use Nets at any time, by which the fry of fish may be destroyed,
13 *R.* 2. 19.
Upon view or enquiry.
by 17 *R.* 2. 9.

To burn their nets, *ut supra.*

43 Such as fish within five miles of the Sea, with any draw net, which is not one inch and an half from knot to knot,
3 *Jac.* 12.
Lamb. 293.

Forfeit the Net and ten shillings to be levied by distress and sale, restoring the over-plus by indictment in Sessions.

44 If any Servant shall go out of one Town into another, without a testimoniall of his lawfull departure.
5 *Eliz.* 4.

Imprisonment untill he procure a testimoniall, which if he cannot do within one and twenty dayes, to be punished as a vagrant.
But this is to be understood of servants in Husbandry, and some others mentioned in the said act.

45 If any be required to serve as an Apprentise, being between the age of ten and eighteen years, and he refuse, it being to Husbandry and other arts, mentioned in the Statute of
5 *Eliz.* 4.

To be committed until he will serve.

46 To cause Artificers and other persons able to labour to work by the day, at hay or Corn-harvest.
5 *Eliz.* 4.

Imprisonment in the Stocks two dayes and one night by the Constable, upon pain of forty shillings on the Constable in Sessions.

47 Give licence under his hand and seal, to any that will travail from one County unto another for work in Harvest.
5 *Eliz.* 4.

48 To allow the cause of putting away of any servant within his terme,
5 *Eliz.* 4. *Dalt.* p. 60.
But not of an Apprentice.

49 Examine such as take Phesants and Partridges in the night time, or hawk in cared or codded Corn,
23 *Eliz.* 10.

Binde them over unto the next Sessions, which if they shall refuse, to commit them to prison.

50 To take Recognisance for appearance of such as take Phesants or Partridges with Setting-dogs or Nets, and to return it to the next Sessions.
7 *Jac.* 11. 8.

51 Estreat into the Exchequer, the forfeiture of such as are convicted before him: for shooting in Crois-bowes & Hand-guns.
33 *H.* 8. 6.

---

52 Certifie into the Sessions the offences presented unto him for not comming to the High-wayes,
3 *Mar.* 8.
5 *Eliz.* 13.
18 *Eliz.* 9.

Five pound if the Justice do not certifie the Sessions.
Forty shillings if the Warden shall not certifie the Justice.

---

53 To present the Constable and Church-wardens to the quarter-Sessions, if they shall not yearly the Tuesday or Wednesday in the Easter week, call together the Parishioners, and choose surveyers for the amending of the highwayes.
5 *Eliz.* 13.

Upon which presentment they are to be fined in the quarter Sessions, for their neglect.

---

54 To present the Constable and way-wardens, if they shall not appoint six dayes for amendment of the high wayes leading to Market Towns.
5 *Eliz.* 13.

To be fined in Sessions upon the Justices presentment.

55 If

55 If any Housholder, Cottager, Labourer, *&c.* do not work or send some sufficient Labourer to work 8. houres upon every of the said six dayes.

5 *Eliz.* 3.
Dalt. 52.

To be fined in Sessions upon the Justice his Presentment.

56 If any fence, hedge or ditch next any high-way, be not from time to time diked, kept low, and repaired by the owner of the same ground.

5 *Eliz.* 13.
Dalt. 52.

To be fined ten shillings in Session.

And for other grounds adjoyning to the grounds next unto the high-wayes, twelve pence for every rode.

57 If any chosen to be Surveyors of the highwayes, shall refuse, and not take upon him the execution thereof.

5 *Eliz.* 13.

To present it in Sessions, where he is to be fined.

58 If the Surveyors for highwayes, do not within one moneth after the offence, present the neglect of such as absent themselves from working at the highwayes.

5 *Eliz.* 13.

To be fined for forty shillings in Sessions, upon the Presentment of any Justice of Peace.

59 If the Bayliff or high-Constable, shall not levy Amerciaments estreated for not repairing of highways.

Or shall not make a true account and payment of sums levied to the Constable and Church-warden of the Parish.

Or if the same be not imployed upon the high-wayes of the Parish.

5 Eliz. 13.

To be fined in Sessions upon the Presentment of any Justice of Peace.

60 Wandring Rogues.

39 Eliz. 4. 8.

To be whipped and sent to the place of their birth.

If the Constable punish them not, he forfeits ten shillings to be levied by warrant from two Justices.

61 Such as will not work by the appointment of the Overseers.

Or common labourers which refuse to work for wages assessed.

39 Eliz. 4. 8.

Judges resolution. 10.

43 Eliz. 2. 8.

7 Jac. 4.

Bridewell.

62 Such

62 Such as refuse to bear the charge of their commitment to the Goal.
3 *Jac.* 10. 8.

To be levied upon their goods, by distress and sale, by the appraizments of four honest persons.

63 Give testimonial of the landing of Souldiers & Marriners under his hand, setting down the place of his landing, and the place to which he is to passe,
39 *Eliz.* 4. 8.
19 *Eliz.* 17. 8.
He may beg.

If he exceed the time limited in his Passe 14 dayes, (except he be sick) or shall have any forged Pass knowing the same: it is Felony.
Coming from his Captain without a Testimonial of his landing, or any forged Testimonial, is Felony.

64 Such as shall advisedly publish any false Prophecies.
5 *Eliz.* 15. *Dalt.* 78.
By inquiry.

Imprisonment one year without Bail, and forfeits ten pounds.

65 If any deceitful mault be made to be sold.
Or any mingled mault.
2 *Ed.* 6. 10. 8.
27 *Eliz.* 14.
21 *Jac.* 28.
Upon view or information.

The Constable may sell it with the advice of one Justice of Peace.

66 If any man shall misuse his Apprentice, and will

To take Bond of the Master for his Apprentice

will not be ordered by a Justice of Peace.
5 *Eliz.* 4.

at the next Quarter-Sessions.

67 To joyn with the Clerk of the Peace, in taking and inrolling of deeds of Bargain and Sale acknowledged before them within six moneths.
27 *H.* 8. 16.

Fees for Land under forty shillings *per annum*, two shillings, (*i.e.*) 12 pence to the Justice, and 12 pence to the Clerk of the Peace.
If it be above forty shillings *per annum*, five shillings, that is, two shilling six pence to the Justice, and two shillings six pence to the Clerk.

68 To joyn with the Customer in certifying the unlading and selling of Corn & Cattel (carried from one place of the Realm to another) to the Customer where it was laden.
5 *Ed.* 6. 14.
13 *Eliz.* 25.

69 Transporters of Corn, Mault, Beer, Butter, Cheese, or Wood unto any place beyond the Seas.
2 *Mar.* 5.
By Enquiry and Examination of the Master and Mar-

1 The Owner of the Ship doth forfeit his Ship, if he do know the same by
5 *Eliz.* 5.
2 The Owner of the Corn doth forfeit the value

Marriners, See 21 *Jac.* 28. *altered.* 3 *Jac.* 11. *if Malt be at* 2 *s. per bush.*	3 The Master and Marriners do forfeit their goods, and imprisonment one year.
70 To examine the Servants and Workmen of Dyers upon oath, if they use any Logwood, and to bind the Master and Examinants to the next Sessions. 39 *Eliz.* 11.	Who upon Conviction in Sessions is to be fined 10 *l.* and to stand in the Pillory.
71 To take the Examination of such as are brought before him, for Felony, or suspition thereof, with the information of those that bring them and to put the same in writing. 3 *Mar.* 10.	Upon pain to be fined by the Justices of Goal delivery.
72 To let to bail such as are imprisoned in the common Goal, if it be not for Felony, or suspition hereof, or for any higher offence, or where Bail is not forbidden by any special Statute. 3 *H.* 7. 3. *Dalt.* 33.	

73 Such as are accused for reporting of false news contrary to *West.* 1.34.
and 2 *R.* 2. 5.
and within three moneths after the offence committed.
2 *Mar.* 3.
1 *Eliz.* 6.
23 *Eliz.* 2. 8

To be committed to pr
son, unless he produce h
author.
Or he may be bound
the good behaviour, for it
a breach of the peace, Pa
de pace, fol. 12. and the wr
upon the case is *contra p*
cem,
see 2 *R.* 2. cap.

74 If no tax be made for Hospitals by the Parishioners, Church-wardens, and Constables.
One Justice of the Peace near the place may make it.
43 *Eliz.* 28.

And levy it by distre
and sale, and for want
distress commitment.
If they make the T
themselves, they may levy
without any other warra

75 The like order is to be taken for the relief of Souldiers and Marriners.
43 *Eliz.* 3. 8.

76 In default of Parishioners and Churchwardens for relief of disabled Souldiers to tax the Parish for his relief untill the next quarter-sessions.
39 *Eliz.* 17. 8.
43 *Eliz.* 3. 8.

If the Church-warde
do make the rate, they m
levie the same without a
other warrant.
But if the Justice of pea
do make it, it must be lev
ed by warrant from him.

77 To grant Warrants for such as hunt with painted faces, or disguised by night in Warrens or Parks, or shall be suspected of such hunting.

1 *H.*7,7. *Lamb.*191.

If he willingly conceal such hunting or any person with him, its Felony, otherwise it is but trespass fineable in the quarter-Sessions.

78 He may seize within one moneth after the arrivall, all the goods of outlandish people, calling themselves Egyptians.

22 *H.*8,10. *Lamb.*196.

And keep the moity thereof to his own use, and account for the rest in the Exchequer.

After the moneth the King is to have all the goods. See 2 *Mar.*4.

79 To take examination of such as are robbed, whether he knoweth any of the parties that robbed him, and to bind him to prosecute them by indictment.

27 *Eliz.* 13:

If he refuse to be examined upon oath, or will not be bound to prosecute, he cannot bring his action and recover upon the hundred.

80 To give notice to any person to forbear to relieve or keep such as shall obstinately refuse to come to Church by the space of one moneth.

35 *Eliz.* 1. 8.

Forfeit ten pound every moneth: But its meant of any servant, sojourner or stranger, that he shall retain in his house, by Stat. 3 *Jac.* 4:

81 To administer an oath to

such confined Recusants, as is licensed to travel by him and three other Justices upon business.

3 *Jac.* 5.
Lamb. 296.

---

82 If any one having licence, shall transport any more corn, victuall or wood, then shall be contained in his licence.

Or having any Licence, shall lade the same or any part thereof, at sundry, or more then one place.

2 *Mar.* 5.

By enquiry, and examination of the Master, and Marriners.

Forfeit treble value and Imprisonment one year.

Forfeit all such Corn and all his goods & Chattels.

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83 No Carrier with Horse, Wain, or Cart, nor Drovers with Cattel, travel upon the Lords day.

No Butcher by himself, or any for him, shall kill or sell any victuall upon the Lords day.

3 *Caroli* 1. 8.

Two witnesses, view or confession.

20 s. for every offence to be levied by distress & Sale to the use of the poor.

6 s. 8 d. if questioned within six moneths.

And the Justice may reward the informer with a third part of the penalty.

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84 Such as commonly sell

Twenty shillings to the

ll Ale, Beere, Cyder or erry, without licence.

3 *Car.* 3.

Two Witnesses, or confession.

poor by distress and sale after three dayes restoring, *&c.* And if no distress, or not payd within six dayes, to be whipped.

If the Constable do not punish him, he is to be committed until he pay forty shillings, or cause him to be whipped.

Second offence, Bridewell one moneth.

Third, untill delivery by Sessions.

5 Compel such as refuse take any crakt money in ment.

19 *H.* 7. 15.

In discretion he may commit him to prison.

See *prace.* 8.

6 Command persons dwelling in any house infected with the Plague to keep in.

1 *Jac.* 31.
Lamb. 197.

If they shall afterwards attempt to go abroad, they may by violence be inforced to keep their houses.

If they go abroad after restraint, they become Felons or vagabonds, in sundry cases mentioned in the same Statute.

If any Clothier shall ay their Carders, Spinners,

He forfeits treble the wages to the Workman

ners and other labourers their wages in lawful money.

If any Clothier shall deliver excessive weight to his workmen, &c.

4 *Ed.* 4. 1.

By examination.

for every default.

He forfeits six pence to the workman for every offence: and

To be committed until payment.

---

88 If any Carder, Spinster, Weaver, Fuller, or Dyer, do not his duty in his occupation.

4 *Ed.* 4. 1.

By examination.

Forfeits double wages to the party grieved, and to be committed until payment.

Which also Constables may punish.

12 *R.* 2. 3.

Petty Sessions by Constables.

and 25 *Ed.* 3. 6. of labourers.

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89 If any Souldier or Marriner having any pension, shall be taken begging, or shall counterfeit any Certificate.

43 *Eliz.* 3.

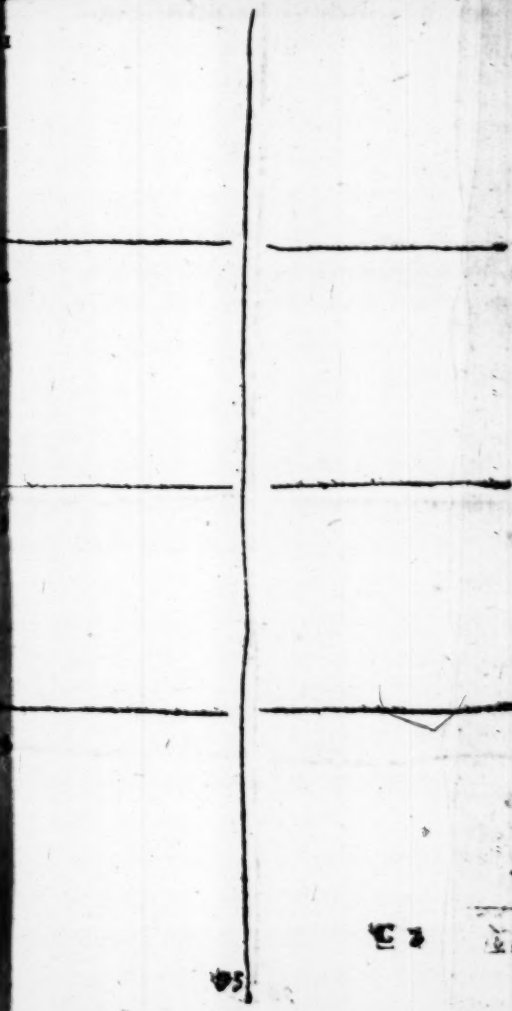
He shall loose his Pension, and be punished as a common rogue.

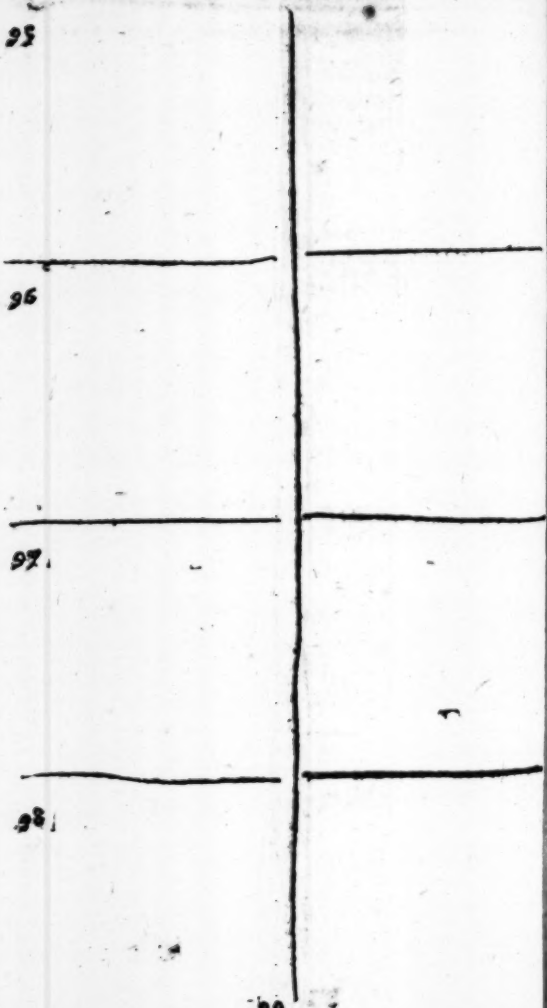
---

90 To take the Examination of any man robbed, whether he doth know any of those that robbed him.

27 *Eliz.* 13.

To bind him in sufficient Recognisance (20 dayes at least before he bring his action against the hundred effectually to prosecute the said robbers by indictment

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Offences.	Two Justices.	Penalties.
110 Clothiers and others refusing to pay wages assessed in Easter Sessions. 1 Jac. 6. Quor. unus. Two Witnesses or confession.		Ten shillings to be levied by distress and sale.

111 If

111 If any shall put any Blocks, Noyls, or Thrumbs into any broad-cloth.

21 *Jac.* 18. 0 0

Two Witnesses or Confession.

Five pound to be levied by distress, and for want of distress to be committed.

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112 Appoint Overseers for Cloth in Towns not corporate, and to swear them.

3 *Ed.* 6. 2.
39 *Eliz.* 20.
43 *Eliz.* 10. 0 0

If any refuse to be Overseer, he forfeits forty shillings, and to be committed till payment.

And in case they search not once every quarter, they forfeit ten pound.

by 3 *Ed.* 6. 2.

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113 Charge Overseers for Cloth. In Towns not corporate, upon their Oaths and to bind them in recognisance of 40l. to do their endeavours to disclose the fraud in making of cloth.

39 *Eliz.* 20.
Dalt. 53.

If any refuse to be bound or appear, he forfeits five pound, and to be committed till payment.

And if Justices of the Peace do not appoint overseers, they forfeit five l.

3 *Ed.* 6. 2.

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114 Upon complaint for any Overseer for Cloth, to call any person (by Warrant) before them, and to examine him upon Oath, for discovery of any offence.

21 *Jac.* 18.

115 Car-

115 Carders, Weavers, Sorters, and Spinners, Embezelling any Wooll or Yarn.

7 Jac. 7.
One Witness.

To give satisfaction, or to be stocked, or whipped.
And so also are the receivers, knowing the same.

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116 Persons restrained from maulting, by order in Sessions.

39 Eliz. 16. o o
Two Witnesses, or confession.

Commitment three dayes without bail, and thenceforth untill he be bound in forty pound by recognizance to obey such order of restraint.

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117 Takers of Phesants or Partridges.

7 Jac. 11. o o
One Witness.

After his conviction before two Justices, *&c.* one Justice may bind him by recognisance, in twenty pound, not to kill or destroy any more.
The punishment being commitment three months, or to pay twenty shillings for every one.

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118 Such as destroy Phesants, Partridges or other Fowl, *&c.* with Guns or Bowes, Nets or other Engines.

To be committed three moneths, unless he forthwith pay to the Churchwardens twenty shillings for every Fowl.

1 Jac. 27. 8°

Partridge 20. shillings.
Other Fowle, 20. shillings.
Egge of Fowl 20. shillings.
Every Hare 20 shillings.

Two Witnesses or confession.

None may keep any Grayhound or Dog, to take Partridge, unless he have ten pound inheritance, thirty pound freehold, or worth two hundred pound in goods, or shall pay forty shillings to the poor, but being convicted as aforesaid, he shall be committed and imprisoned, as aforesaid.

1 Jac. 27. 8°
Lamb. 334.

Or after one monethes commitment, to give Recognizance in twenty li. not kill no more.

He that hath forty pound *per annum* of freehold, or eighty pound lease, or worth four hundred pound in goods, may by himself or his meniall servants, take Partridge in the day time between *Mic aelmas* and *Christmas*.

7 Jac. 11.

119. Give Warrants to the Constable, or Tythingman, to search the houses of persons suspected, for Setting-Dogs, or Nets, other then such as have 40 pound *per annum* in Lands, eighty pound in lease, or worth four hundred pounds in goods.

7 Jac. 11. 8°

And such as they find cut in pieces, kill and destroy.

120 Such as Hawk between the first of July and the last of August. 7 *Jac.* 11. o 23 *Eliz.* 10. Two Witnesses.		Commitment 3. moneths, or to pay forty shillings for every Hawking, *&c.* and twenty shillings for every Phesant and Partridge, if convicted within 6 months.
121 Such as have and use any Guns or Bowes to kill Dear and Conies, or keep Haies, Pursnets, Ferrets, or Cony-dogs, unless he have forty pound inheritance *per annum*, or worth two hundred pounds in goods, or have Warren or grounds inclosed, the profit whereof is worth forty pound *per annum*. 3 *Jac.* 13. o		He that hath one hundred pound *per annum*, may take and keep them for his own use. Other offences to be punished in Sessions.
122 Defaults of Officers touching weights and measures. 18 *H.* 7. 4. *Lyer. unus.*	Enquiry or examination.	Fine.
123 Set fines upon such as shall buy and sell with unsealed weights and measures. 11 *H.* 7.		To be fined in discretion.

11 H. 7. 4.
Quer. unus.
Upon examination or enquiry.

Note, water measure is five pecks to the bushel.

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124 Such as shall disturb any Preacher licenced.
1 *Mar. Parl.* 1 c. 3.
Two Witnesses.

Commitment 3. moneths and further untill the next Sessions.

All Faires and Markets shall cease on Sundayes, Ascension day, *Corpus Christi*, Assumption of our Lady, All Saints and good Friday, (four Sundayes in Harvest excepted) and except necessary victuall.
27 *H.* 6. 5.

Upon pain of forfeiture of all the goods so shewed to the Lord of the franchise or liberty.
But they may keep their Faires and Markets, three dayes before or after. *Quære.* If Justices of the Peace may punish by this Statute.

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125 To require such Popish Recusants convict as shall travel above 5 miles, (if they conform not within three moneths, and shall have lesse than forty marks *per annum*, or not worth forty pound in goods) to abjure.
35 *Eliz.* 2.
Lamb. 338.

If he refuse to abjure, it is Felony.
See Sect. 20.
This abjuration must be certified unto the next Assizes.
After a man hath abjured and goeth not out of the Realm, he must be indicted thereof.
Lamb. 551.

126 Require any one that is convicted or indicted for not coming to Church, or that hath not received the Sacrament twise the year past; or any unknown person passing through the Country, who being examined upon Oath, confesseth himself to be a Recusant, or that he hath not received the Sacrament twice the year past, to take the Oath of Allegeance.

3 Jac. 4.
Quor. unus.

If he shall refuse to take the Oath, to be committed untill the next Assizes or Sessions.

127 Require the Oath of Allegeance, of any above the age of eighteen years, and under the degree of a Baron.

7 Jac. 6.
Quor. unus.

If he refuse to take it, to be committed without bail untill he will take it.

128 Search the house of any Popish Recusant convict, or whose Wife is a Recusant convict, for Popish Books and Reliques.

3 Jac. 5.

To burn such Books and Reliques, but if it be a Crucifix, or relique of price, it is to be defaced in open Sessions, and restored again to the owner.

129 Such married Women as are convict Recusants,

7 Jac.

If she conform not within three moneths to be committed untill, &c. un-

	7 Jac. 6. Quor. unus.	leſſe her husband will pay ten pounds monethly, or the third part of his lands.
130	To take the ſubmiſſion of any perſon reconciled to the Biſhop of *Rome*, within ſix dayes after his return, and give him the oaths of Supremacy and Allegeance, and to certifie the ſame unto the next Seſſions. 3 Jac. 4.	Forty pounds, if he certifie not the ſame unto the next Seſſions.
131	To examine any unknown perſon, whether he be a Prieſt or Jeſuite. 35 Eliz. 2.	If he refuſe to anſwer directly he is to be committed until he will anſwer.
132	To take the Oath of Allegeance of ſuch as have charge of Caſtles, Forts or Garriſons, and Captains having charge of Souldiers within this Realm. 7 Jac. 6. Quorum unus.	If any ſhall refuſe, he is to be committed until the next Seſſions or Aſſizes.
133	Putting ſuch poor out of their Pariſhes as are not to be put out, 39 Eliz.	5 Pound, and to be bound unto the good behaviour by warrant from two Juſtices

39 Eliz. 4. Two Witnesses or Confession.	○	stices. Quorum unus.
134 Defaults of overseers for the poor. 43 Eliz. 2. Quorum unus. Two Witnesses.	○	Twenty shillings for every neglect, or not meeting monethly. If they refuse to give accompt, to be committed.
135 Such as run away and leave their charge upon the Parish. 7 Jac. 4. Such as threaten to run away. 7 Jac. 4. Two Witnesses,	○	To be punished as incorrigible Rogues. To be sent to Bridewell, unless they give security to discharge the Parish.
136 If any Woman shall have any Bastard child, which may be chargeable to the Parish, Jac. 4.	○	1 Bridewell for one year, but she must be sent, it seemeth, from the privy Sessions, 2 Bridewell one year, and bound not to offend so again.
137 To take order for relief of Bastards, and the ease of the Parish, and for the punishment of the mother and reputed father. 18 Eliz. 3. Quer.	○	If they perform not the order without appeal, and bond given to abide the order of the next Sessions, (if they there shall make any) or else to obey

	7 Jac. 6. Quor. unus.	leſſe her husband will pay ten pounds monethly, or the third part of his lands.
130 To take the ſubmiſſion of any perſon reconciled to the Biſhop of *Rome*, within ſix dayes after his return, and give him the oaths of Supremacy and Allegeance, and to certifie the ſame unto the next Seſſions.	3 Jac. 4.	Forty pounds, if he certifie not the ſame unto the next Seſſions.
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132 To take the Oath of Allegeance of ſuch as have charge of Caſtles, Forts or Garriſons, and Captains having charge of Souldiers within this Realm.	7 Jac. 6. Quorum unus.	If any ſhall refuſe, he is to be committed until the next Seſſions or Aſſizes.
133 Putting ſuch poor out of their Pariſhes as are not to be put out,	39 Eliz.	5 Pound, and to be bound unto the good behaviour by warrant from two Juſtices

39 *Eliz.* 4. Two Witnesses or Confession.	○	stices. *Quorum unus.*
134 Defaults of overseers for the poor. 43 *Eliz.* 2. *Quorum unus.* Two Witnesses.	○	Twenty shillings for every neglect, or not meeting monethly. If they refuse to give accompt, to be committed.
135 Such as run away and leave their charge upon the Parish. 7 *Jac.* 4. Such as threaten to run away. 7 *Jac.* 4. Two Witnesses,	○ ○	To be punished as incorrigible Rogues. To be sent to Bridewell, unless they give security to discharge the Parish.
136 If any Woman shall have any Bastard child, which may be chargeable to the Parish, *Jac.* 4.	○	1 Bridewell for one year; but she must be sent, it seemeth, from the privy Sessions, 2 Bridewell one year, and bound not to offend so again.
137 To take order for relief of Bastards, and the ease of the Parish, and for the punishment of the mother and reputed father. 18 *Eliz.* 3. *Quor.*	○	If they perform not the order without appeal, and bond given to abide the order of the next Sessions, (if they there shall make any) or else to obey

	Quor. unus. It seemeth the Mother may be examined upon oath *&c.* *Dalt.* 32.	obey the same order) they are to be committed until, *&c.*
138	To licence poor people to travel to *Bath* and *Buxton.* 39 *Eliz.* 4.	If they have no Licence they are punishable, as Rogues.
139	To nominate Overseers for the poor yearly within one moneth after *Easter.* 43 *Eliz.* 2. & *Quor. unus.*	If there be no nomination of them, then every Justice forfeits five pounds for his neglect.
140	Such as disturb the punishment of Rogues. 39 *Eliz.* 4. & *Quor. unus.* Two Witnesses or confession.	5 Pound to be levied by Distress, and bound to the good behaviour.
141	Officers remisse in punishing of Rogues. 39 *Eliz.* 4. *Quor. unus.* Two Witnesses or confession.	Ten pound to be levied by Distress and Sale.

142 Such as shall not apprehend rogues being at their doors.

1 *Jac.* 7. ♂
Quor. unus.

Two Witnesses or Confession.

Ten shillings to be levied by distress.

If the Constable do not punish such as are brought unto him, he forfeits twenty shillings.

143 To hear and determine all causes, which shall come in question upon the Statute of Rogues.

39 *Eliz.* 4. ♂
Lamb. 331.
Quor. unus.

Two Witnesses, or confession.

144 Such as give wages contrary to rates in *Easter* Sessions.

Lamb. 330.

Such as hire Servants for lesse time then one year, but this extends onely to some kind of Artificers, & tradesmen.

Such as retain any servant being out of service without shewing a testimonial of his lawful departure from his Master.

5 *Eliz.* 4.
Quor. unus.

Imprisonment ten dayes, without Bail, and he that is retained, one and twenty dayes. And the Covenant void.

To be committed at the Sessions.

Five pounds to be recovered in Sessions.

145 No Artificer or labourer may depart from the retainer, until his work be finiſhed, if the retainer will have him ſo long, and pay him his wages.

5 *Eliz.* 4.
Quorum unus.

Imprisonment one moneth, and forfeit five pound to the party.

Who may have an action of debt for the ſame in the Seſſions.

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146 If any put away his ſervant at the end of his terme, without a quarters warning.

If any ſervant depart without a quarters warning given before two witneſſes.

If any promiſe to ſerve, and will not ſerve.

5 *Eliz.* 4.
Quorum unus.

Forty ſhillings in Seſſions.

To be committed until he will ſerve, unleſs he departed with the conſent of a Juſtice of Peace.

Commitment untill he be bound to ſerve.

By hearing and examining the matter upon complaint.

But theſe ſervants muſt be retained in Husbandry, or ſuch Arts and Sciences as are mentioned in the Statute of 5 *Eliz.* 4.

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147 If any ſervant ſhall make any aſſault upon his Maſter, or ſuch as ſhall have

Impriſonment one year or leſſe in their diſcretions, or any other puniſhment

have oversight of him.
5 Eliz. 4.
Quorum unus.
Two Witnesses or confession.

they think fit, except losse of life or member.

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148 Appoint any woman between the ages of twelve and fourty, being out of service, and unmarried, to serve by the year, day, moneth, &c. and for such wages as they think fit.
5 Eliz. 4.
Quorum unus.

If she refuse, to be committed until she will serve.
But being under twelve years she is not compellable to serve, nor bound by her Covenant, neither boys, except they be bound as Apprentices, which they may at ten years, and with Fishermen and Gunners at seven years.
5 Eliz. 5.

And men under sixty, and above twelve years of age to Husbandry.

---

149 Remove the common selling of Ale and Beer, and if any sell without licence, or being prohibited.
5 Ed. 6. 25.
Quorum unus.

Commitment for three dayes, and then to be fined twenty shillings in Sessions.
They must certifie the offence, and discharge at the next Sessions, which is a conviction, and upon this Certificate, he must be fined.

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150 To tax the Counties within five miles of any Town infected with the Plague

To be levied by distress and sale, and for want of distress, commitment.

Plague towards their weekly relief.
1 *Jac.* 31. 8°

This Tax must be certified at the next quarter Sessions.

151 Officers remisse to collect rates made for relief of persons infected.
1 *Jac.* 31. 8°

Ten shillings for every offence.

152 To appoint Searchers, Watchmen, and keepers of persons infected with the Plague.
3 *Jac.* 31. 8°
And to administer Oaths unto them for performance of their offices.
Lamb. 338.

If any go abroad after restraint, having any infectious sore upon him uncured, its Felony.
If he have no sore upon him, he is to be punished as a Vagabond, by 39 *El.* 4. and bound to the good behaviour one year.

153 If any shall refuse to obey the sentence of the Ecclesiasticall Judge, in case of Tythes. 27 *H.* 8. cap. 20.
32 *H.* 8. 7.
27 *Eliz.* 11.

Commitment untill he shall stand to such order.

154 To assess Towns and the hundred, for levying of money lost in robberies.
Eliz. 31.

Which afterwards is to be proportioned upon the Inhabitants by the Constable, and levied by distress.

155 To appoint what Fishermen shall be pressed for Marriners. 5 *Eliz.* 5. 6	
156 To punish Rioters. 13 *H.* 4. 7. 2 *H.* 5. 8. 8 *H.* 6.14. 19 *H.* 7.13. By Indictment.	Fine and Imprisonment.
157 Such as escape taxation at Subsidies. *Lamb.* 336. 3 *Car.* p.18,19.	To be charged double, and to be punished at the discretion of the Justices.
158 Bayl such Prisoners as are committed for Felony, or suspicion thereof. 2 *Mar.* 13. *Quor. unus.*	To be fined by the Justices of Goal-delivery.
159 To bayl such as are imprisoned upon process from the Sessions, made upon penall Statutes, not forbidding bayl. *Lamb.* 348.	
160 To joyn with the Bishop	By Statute. 2 *H.* 5. 1.

Bishop and Chancellor in taking of accounts of such as have the collection of money and Revenues belonging to any Hospitall.
14 *Eliz.* 5. o o
25 *Eliz.* 18. o o

the ordinary may enquire and punish by Censures and laws of the Church, without any other to assist him, if it be any Hospital which is not of the foundation of the King, if he be, then he must have a Commission to enquire.

161 To take order for setting on work such Souldiers or Marriners, as do come from the Seas, if he cannot get work in the place where he liveth.
39 *Eliz.* 17. o

And for want of work they may tax the whole hundred for his relief, until he can get work.

162 To divide the fourth part of a wood being appointed by the Sessions upon Complaint of the Lords.
35 *H.* 8. 7.
13 *Eliz.* 21.

163 To over-look Sheriffs books and amerciaments, and to seal the Indentures of his Estreats, being appointed by the *Custos rotul.* or eldest of the *Quorum.*

164

164 To swear the Under-sheriff, and to give him the oath of Supremacy, and the oath for true Execution of his Office.

27 *Eliz.* 12. *Quor. unus.*

If he impannel any Jury before he be sworn, he forfeits forty pounds.

The like Oath they may administer to every Deputy, Clerk of the Sheriffe, that hath authority to return any Jury, and shall meddle in the execution of any Process in any Court of Records, and are Bayliffs of Liberties, but not of such as gather amerciaments.

27 *Eliz.* 12.

165 To burn all Logwood which they shall find in any mans custody.

23 *Eliz.* 9.

166 To bind to the Sessions such as shall get into their hands any money or other things, by colour of any false tokens or letters in other mens names.

33 *H.* 8. 1. *Quor. unus.*

Where upon conviction, he is to be set in Pillory, or to have any other corporall punishment, except death.

167 To convent Bayliffs and Head Constables upon

Imprisonment until they have paid the same.

upon complaint of Church-wardens having estreats for collecting of Fines for the high-wayes, and to take account, and compell them to pay all arrearages to the Constable and Church-wardens:

3 Mar. 8.
5 Eliz. 13.
Quor. unus.

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168 To assess Fines upon the Constables, if they appear not at the Petty-Sessions.

7 Jac. 4. ℔
Dalt. 103.

Any Fine under ten shillings.

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169 To grant a precept to the Sheriff within ten dayes after the commitment of any one sent to prison for speaking of false newes, contrary to 3 Ed. 4. 34.

2 Rich. 2. 5. for returning a Jury to enquire thereof.

2 Mar. 3.
1 Eliz. 6.
23 Eliz. 2. ℔
Quor. unus.

Ten pound.

Quære, If this Statute be in force, the words are very doubtfull.

170 If any retaylor present unto them any Cloth defective, either in length or weight contrary to, 4 *Jac.* 2.	To divide the same into three parts. One for the Overseere and Searchers. Two parts for the poor.
171 Idlers that refuse to work, and disorderly persons. 7 *Jac.* 4. 43 *Eliz.* 2. 39 *Eliz.* 4. 4 *H.* 7. 12.	To be committed unto house of correction.
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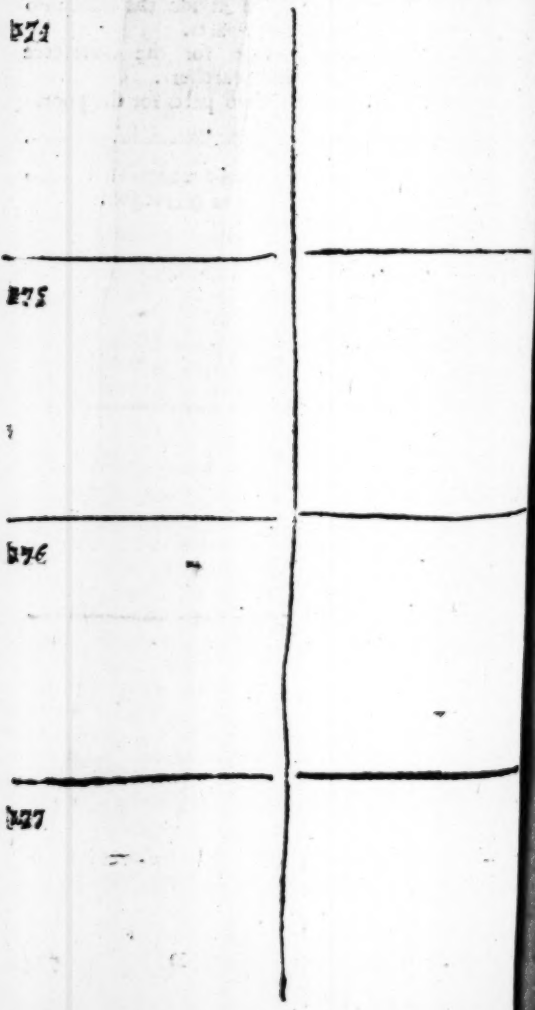
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Offences. | *Three Justices.* | *Penalties.*

184 To make Certificate for an Apprentice, that his Parents may dispend forty shillings *per annum*.
5 *Eliz.* 4.

185 To take information against such as shall deprave the Sacrament of th Lords Supper.
1 *Ed.* 6. 1.
1 *Eliz.* 1.

Two Witnesses.

To binde over the accusers at the next Sessions.

And at the Sessions they may grant a Writ to the Bishop to present.

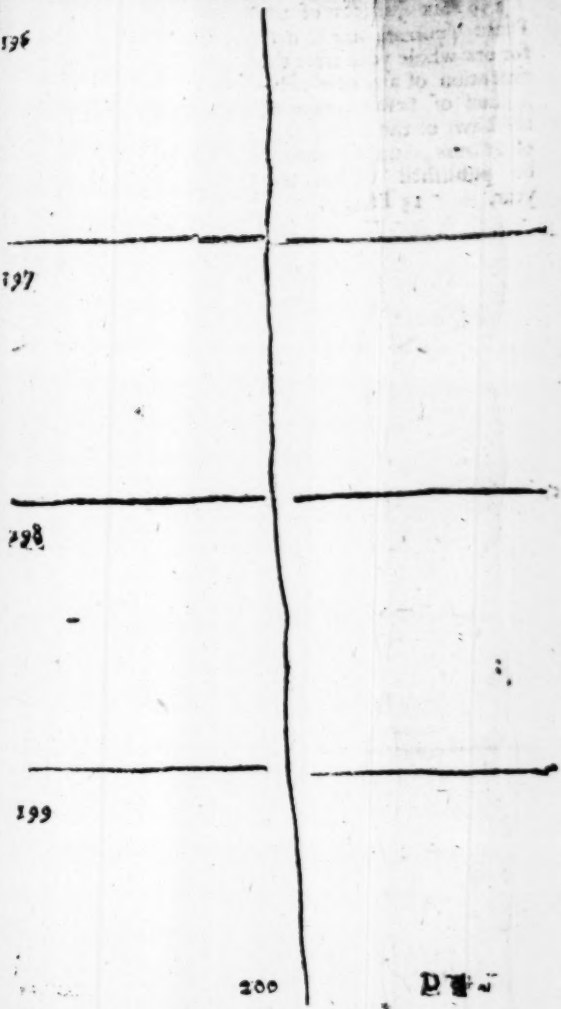
186

186 To licence Droves, and Badgers, and such as transport Corn and Cattle from one port to another. 2 Ed. 6. 14.		This Licence must now be granted in the Quarter-Sessions. by 5 Eliz. 12.
187 To bayl such as shall speak unreverently of the Sacrament of the Lords Supper. 1 Ed. 6. 1.		
188		
189		
190		

193

Offences.	Four Justices.	Penalties.
192 To joyn with the Lieutenant or Deputy, or Bishop, in licencing of a confined Recusant to travel about his business. 35 *Eliz.* 2. 3 *Jac.* 5.		If such a Recusant have business for one week, and a Licence be granted him for a moneth, his Licence is void, as Sir *John Walter* Lord chief Baron delivered in his charge at *Exon*, the Summer Assizes 1628. *Ann* 4. *Carol.* I.
193 To make Taxes for reparation of Bridges. 22 *H.* 8. 5. *Mor. unus.*		
194 To give order for taking away of Armour from Popish Recusants being convicted. 3 *Jac.* 5.		This order must be made in the Quarter-Sessions.

195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Offences.	*Six Justices.*	*Penalties.*
199 Six Justices of the Peace *(quorum duo)* may for one whole year after the execution of any new commission of Sewers, execute the Laws of the commission of Sewers, unless Sewers be published within the year. 13 *Eliz.* 9.		

A

VADE MECUM,

AND

CORNU COPIA.

AN EPITOME

OF

Mr. *Stamfords* Pleas

OF THE

CROWN:

With other Notes out of approved and good Authours of the same ARGUMENT.

By Wa. Young.

LONDON,

Printed, *Anno Dom.* 1663.

IT *is ordered by the Committee of the House of Commons concerning Printing, that this Book intituled* A Vade Mecum, *and* Cornu Copia; *be forthwith Printed, for the publick good.*

Maij 26. 1642. JOHN WHITE.

TREASONS.

STAT. 25. Ed. 3. 2. If any man ſhall compaſſe or imagine the death of the King, the Queen his Wife, or their eldeſt Son and Heire: or if a man defloure the Queen, or the eldeſt Daughter of the King being unmarried, or the Wife of the Kings eldeſt Sonne and Heire; or if any man levie War againſt the King in his Realm, or being adhering to the Kings enemies in the Realm, or give them ayd or comfort in this Realm, or elſewhere.

King. Queen. Prince defloured.

Kings enemies.

If any man ſhall counterfeit the Kings great or privie Seal, or his Money: or if any man ſhall bring falſe money into this Realm, counterfeit to the money of *England*, to merchandiſe, or put away, knowing it to be falſe.

Seal, money.

If any ſhall kill the Lord Chancellour, Treaſurer, or Juſtices of either Bench, Juſtice of Eyr or Aſſizes, or any other Juſtice aſſigned to hear and determine, being in their place, which extends to the King and his Royal Majeſty; and in ſuch Caſes the for-

Chancellour. Treaſurer. Juſtices.

Escheats. forfeit of Escheats do belong unto the King.

Compassing. Note, that compassing the Kings death is Treason, although it be not effected, *M. 9. H. 6. fol. 47. P. 13. H. 4. fol. 19. Stamf.* fol. 2. *b.*

Imagine. Or if any do imagine the death of the King, and utter the same by words onely. It's Treason, *ibidem.*

Consenters. Aiders. If any shall counterfeit the great of privie Seal, or the Kings Coyn: here is no mention made of any consenters or aiders, and yet the aiders and consenters are taken to be within the proviso of this Statute. *M. 19. H. 6. fol. 47.*

Seal. Note, It is the counterfeitting of the great Seal, to take an old Seal, and to fasten the same to a writing made by the King, *Stamf.* fol. 3. *a.*

Money. This money must be understood of money coyned within this Realm, or the members thereof: for if a man shall counterfeit the money of another Kingdom which is currant within this Realm. It is not Treason by this Statute. But see the Statute of 1 *M. cap. 6.*

Utter. If any shall counterfeit money, although he do not utter the same, yet it is Treason. *M. 6. H. 7. fol. 13. M. 1. Ri. 3. in Misprision.*

Bring. Also the words of the Statute are, If a man shall bring false money into this Realm, counterfeit unto the money of *England*, knowing the money to be false. Put case then, that false money is made within the Realm, or within any member thereof, as *Ireland*, *&c.* and one knowing the same, doth utter the same in payment: It seemeth it is not Treason, because the Statute, 25 *Ed.* 3. doth not extend thereunto. 3 *H. 7. fol. 10.* where it is said, that the Statute is to be under-

See pag. 32.

Ireland.

underſtood of falſe money made in another Realm, and brought into this Kingdom.

Alſo the falſe money made in another Realm, muſt be counterfeit to Engliſh money. But for remedy of theſe miſchiefs, there was another Statute at the ſecond Seſſions. *An.* 1. *Mar.* c. 6. and another made *An.* 1. and 2. *Phil. & Mar.* 11. *Stamf.* fol. 3.

Coins of gold or ſilver current.

Stat. 1. *Mar.* cap. 6. If any perſon ſhall counterfeit any Coyn of Gold or Silver, which is not the proper Coyns of this Realm, and which ſhall be currant within the Realm, by the conſent of the Queen, her Heirs or Succeſſors. Or ſhall forge the Queens ſign Manuall, Privie Signet, or privie Seal, ſuch offenders, their Counſellors, procurers, aiders, and abettors are Traitors, ſhall forfeit as in caſe of high Treaſon.

Signe manuall.
Privie ſignet.
Privie ſeal.

Forrain money counterfeit.

Stat. 1. & 2. *Phil. & Mar.* 11. If any man ſhall bring into this Kingdom any forged and counterfeit money, like to the Coyns of any forraign Realm, knowing the ſame to be counterfeit and falſe, with intent to utter the ſame, ſuch perſons, their Counſellors, procurers, aiders and abetters, are Traytors.

Utter.

Miſpriſion.

If any falſe money be made in this Realm in *Ireland*, or any Dominions thereof, and another knowing the ſame, ſhall utter the ſame in peyment, he committeth not high Treaſon, but miſpriſion of Treaſon. *Pult. de pace* fol. 108. *ſect.* 6. 3 *H.* 7. 10. See *Miſpriſion.* pag. *Stat.* 5 *Eliz.* 11. clipping, waſhing, rounding, or filing, for gains ſake, of any proper Coins of this Realm: or of the money of another Realm, currant in this Kingdom, and by Proclamation allow-

Clipping. waſhing. currant. Proclamation.

lowed, is Treason, *Stat.* 18. *El.* 1. *Accords.*

Coyns not current.

Stat. 14 *Eliz.* 3. If any person shall forge, or counterfeit any coyn of Gold or Silver, not being the proper Coins of this Realm, not permitted to be currant within this Realm: It is misprision of high Treason.

Forreign Power. Bishops of Rome. Books.

Stat. 1. *Eliz.* 1. Extolling of forreign power: or by speech or writing to maintain the authority of the Bishop of *Rome*, *Stat.* 5. *Eliz.* 1. Books in defence of the Popes authority, and such as bring or justifie them, or that shall Print them, the second offence Treason.

Bulls, reconcile, publish.

Stat. 13. *Eliz.* 2. If any shall put in ure any Bull obtained from *Rome*: or if any shall reconcile any, or shall be reconciled, or if any shall obtain or publish any Bull whatsoever, its Treason.

Withdraw to Romish Religion.

Stat. 23 *Eliz.* 1. If any shall have, or shall pretend to have power: or shall practise to absolve any subject from his natural obedience: or to withdraw him, to that intent, from the Religion now established, to the *Romish* Religion; or move him to promise obedience to the See of *Rome*, or any other Prince, its Treason.

Stat. 27 *Eliz.* 2. If any Jesuite or Popish Priest shall come into, or repair into the Kingdom, its Treason.

Priests, Jesuites, Obedience. Pope, Prince, absolved, conceal, Lunatick.

Stat. 3 *Jac.* 4. To perswade any subject from his natural obedience, to the Pope, or any other Prince to be absolved, or to promise obedience, Treason. To conceal the same is misprision of Treason.

If one who is not *compos mentis*, or lunatick, do attempt to kill the King, it is high Treason in him, *Cook lib.* 4. fol. 124. *Pas de pace*, 108. *Sect.* 3.

If

If two or three ſhall conſpire, or imagine the Kings death, or to levie War, *&c.* and ſome of them do the ſame, its treaſon in them all. *Pult.* 108. *Cook lib.* 1. fol. 28. *Dyer*, fol. 98.

If a ſubject born do practiſe with a forraign Prince to invade the Realm. Its Treaſon, *Dyer*, 298. *Pult.* fol. 108. *ſect.* 4. And ſo it is to kill him that rides to ayd the King. *Ride to ayd the King.*

Stat. 3. *H.* 7. *cap.* 14. If any of the Kings ſworn Servants of the Checke Roll conſpire to deſtroy any of the Kings privy Councel, Noblemen, or Officer of the Kings Houſhold, it is Felony, although nothing be effected. *Kings Councell. Check-rolls.*

Petty Treaſon.

WHen a Servant kills his Maſter, or a Wife kills her Husband, or when a ſecular or religious man ſhall kill his Prelate, to whom he oweth faith and obedience: Such treaſons give the forfeiture of Eſcheats to the Lord of the fee. *Servant. Wife. Prieſt. Eſcheat.*

But the King ſhall have *annum diem & vaſtum*, and forfeitures of Chattels. And Writs of *ſcire facias* ſhall go out thereupon, without any originall, *Stat.* 25 *Ed.* 3. 2.

When a Woman kills her Husband, ſhe ſhall be burnt. If a Servant kill his Miſtreſs, he is within the purvey of the Statute

ture, *M.*10. *H.*6. fol.47. so if a servant after he is out of service kill his Master, if it be for ill conceived against him while he was his servant, *Ass.* 33. *pl.*7. *Lamb.* 246.

Abetters. Also abetters, and procurers, are contained within the last part of this Statute, concerning Petty Treason, although not named, *Stamf.* fol.10. *b.*

Sonne. It is not petty Treason for a Son to kill his Father, unless he take meat, drink, or apparel, or wages of him: and so do his business, for it is an hired servant, *Lamb.* 245. *Crompt. fol.* 13. *Cook* fol. 13,14.

Bastard. And so for a Bastard to kill his step-mother, Treason. But *Cook lib.*7. fol.13.*b.* saith, it's petty Treason in a Son to kill his Father, though he have not meat and drink of him: and for a Bastard to kill his Mother, *Crompt. Just.* fol.13,14.

Wife. Stranger. Servant. If the Wife, and a stranger, joyn in killing or poysoning the Husband: or a servant a stranger, in destroying his Master or Mistress, that is petty Treason in the Wife and servant, and murther in the stranger. But if the Wife and servant do conspire to kill the Husband, appointing a time and place therefore, and the servant doth execute the same accordingly, in the absence of the Wife, *Wife absent.* then it is *petty Treason in them both*, whereas if it had been done by a stranger, he should have been accessary to it as to a murther onely, *Dyer* 332. *pl.* 254. & *pl.* 105. *Lamb.* 246.

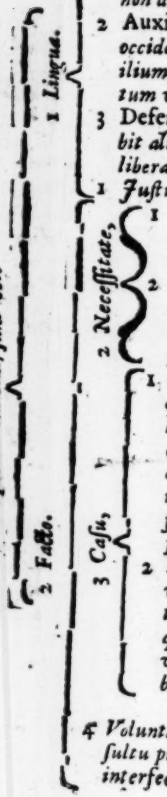
Note, whatsoever act will prove murther between strangers, the same will make petty Treason, between those former parties, *Lamb.* fol. 247.

Note, there is a secular Priest, which we call

call a Parish-Priest, and a regular or a religious Priest, *viz.* a Monk, Frier, *&c.* which is entred into some professed order of Religion, and by a secular man, before named, you must not understand a lay-man, but a Minister within orders, *&c.* *Secular Priest.*

If a Subject be killed by another of the Kings Subjects out of the Realm, he cannot be indicted for it, but an appeal lyeth before the Constable and Marshall, and shall be tryed by witnesses, or combate, *Cooks Institut. fol.* 74. Sir *Francis Drake*, and *Dowties* case. *Duels.*

Murther *Sequitur.*


Præcepto: qui præcipit perimere & occidere; quia cum non sunt immunes à culpa, immunes non debent esse à pœna.
2 Auxilio, illi qui occiderunt nec voluntatem occidendi habuerunt, sed ad præstandum auxilium occisoribus venerint, quamvis aliquo tutum violentia repellatur.
3 Defensione: ut si aliquis dissuadendo retrahit aliquem à bono proposito volentem alium liberare à morte.
1 Justitia: ut cum Judex rerum juste damnat.
1 Linea.
1 Evitabilis si occisor cum evadere potuisset absque occisione tunc erit reus homicidi.
2 Inevitabilis: sine odij meditatione in metu & dolore animi, se & suos deliberando, quando aliter evadere non possit.
2 Necessitate,
1 Siquis dederit operam rei licitæ, ut si quis arborem incidebat, & adhibuit diligentiam quam potuit scilicet respiciendo & reclamando nec minus tarde, aut dimisse, sed tempore congruo, & ita clamose ut si aliquis tibi fuisset ausfugeret, aut sibi præcaveret: non imputabitur.
2 Illicite, ut si quis lapidem projiciebat versus locum per quem hominés transitum fecere: vel dum sequitur quis Equum vel Bovem, & aliquis a Bove vel Equo percussus fuerit: hic imputabitur ei. Stamf. fol. 6.
3 Casu,
Species homicidij sunt vel.
2 Facto.
4 Voluntate: ut siquis ex certa scientia & insultu præmeditate, vel causa lucri, aliquem interfecit. Stamf. pag. 7.

Murtha.

Murther.

MUrther is, when a man doth kill another with a felonious intent: which man that is not *ſanæ memoriæ*, cannot do, *l.* 28. *H.* 7. fol. 31. the ſame Law is of a man Lunatick, or Dumb, and deaf, 31 *H.* 7. fol. 2. *Lunatick.* *Dumb and deaf.*

But if one of the age of twelve years, or more ſhall kill another, it is Felony: or in caſe he be but of nine years, ſo as by any evidence it may appear, that he underſtood; or if it may be intended, that he had knowledge of good and evil, as by his excuſe: or by any after-act of his, after he committed the murther, as by hiding the body in ſome ſecret place, *quia in tali caſu malitia ſupplet ætatem, ibid.* *Infant.* *Hiding.*

If any, being no Phyſician or Chirurgion ſhall undertake a cure, and the party ſhall die under his hand, its Felony, *Stamf.* fol. 26. *Phyſician.*

If a man have an Ox which is accuſtomed to puſh, and the owner knoweth the ſame, and doth not tye him up, but ſuffereth him to go at large, and the Ox killeth a man, it is Felony in the Maſter. *Oxe.*

If a man ſtrike another with an intent only to beat him; yet if he ſhall die of the beating, it is Felony. *Beating.*

By

Enticement. by the wicked ſpeeches of a Woman, two men fight together, and one killeth the other, in this caſe the woman was arraigned of murther: *Fitz. Coron.* 331. So if three come to diſſeiſe a man, and one of the three killeth a man, the other two in ſuch caſe have been taken for Principals, *Stamf* fol. 17. *Fitz. Choron.* 350.

Diſſeiſe.

Lye in wait. If two perſons of malice forethought, lye in wait the one to kill the other, this is murther, without reſpecting who gave the firſt blow.

If two perſons do mutually bear malice one to the other, and meeting by chance, they agree to go into the field, and one killeth the other, this is murther. *Lamb.* 238.

If a man of premeditate malice ſtriketh at any other, and after the fight flieth to the wall, and the other purſues him to the wall, and there is ſlain by him that gave the firſt blow, this is murther notwithſtanding his flying, *ibid.*

Flying, pag. 83. *in malice.*

If *John* and *William* do fight together, by agreement, upon their former malice, and *John* woundeth *William*: afterwards they meet again upon the ſudden, and falling to fight, *William* ſlayeth *John*: this is murther in *William*, *Lamb.* 238.

Sudden. If one ſhall ſuddenly without any ſhew of malice, draw his weapon and kill another, the Law judgeth it to have proceeded of malice, however it were ſecretly kept from the other, *Lamb.* 239. *Stat.* 1. 3. *Jac.* 8.

Officer, pag. 146. *arreſt.* It is murther to kill a known Officer: or one that had ſhewed him ſufficient warrant to arreſt him for debt onely, *Lambert* 239.

If

If a Harlot will take the Child whereof she is newly delivered, and cover it with leaves, and let it lie abroad, whereby vermin destroy it: so if a man take his sick Father, and carry him into the cold air, whereof he dieth, *Fitz. Indict.* 3. *Harlot. Vermin. Sick.*

If a Goaler kill his prisoner by overhard keeping, *Lamb.* 240. *Goaler.*

Again, whersoever a man goeth about an unlawful act, as to beat a man, or disseise him of his Land, and he do in that case kill him, it is murther. So if a Thief kill a man whom he never saw before, and intended onely to rob him, *Pl. Com.* 474. *Unlawfull act. Thief.*

If a man command his servant to beat another, the which he doth in his presence, and he die thereof, it's murther, *Pl. Com.* 475. *Command to beat, see pag. 33.*

Quære, If it be in defence of his goods, fishing, or free Warren; for battery in defence of a mans goods, is justifiable, *Lamb.* 129.

Wherea s a man entred into another mans Orchard, and stole Pears from a Tree, and in the doing kills the owner that rebuked him: it was adjudged murther, *Lamb.* 240. *Orchard.*

If a man of former malice do shoot at one, and thereby killeth another, against which he had no malice, *San.* case. *Com.* 474. *Agnes Gores* case, *Cook lib. 9. fol.* 81. *Shoot at one, and killeth another.*

Two fight upon malice prepensed, and one of them killeth a stranger, that laboureth to part them, it is murther in him that killeth him, if he may be discerned, and if not, then in both, *Dyer* 228. *Labouring to part.*

Note, All such as be present, and aiding, abetting and comforting him that committeth *Presens.*

teth a murther, be principal murtherers, as well as he that giveth the ſtroke therein. *Com.* 100. *Saliſburies* Caſe, *Lamb.* 242.

But I think not in all Caſes, for it is ſaid there in *Plod. Com.* in *Saliſburies* Caſe, that if the Maſter and another, ſhall upon premeditate malice fight together, and the Maſters man knowing nothing of the former malice between his Maſter, and the other: but as they are fighting, the man laboureth to help his Maſter, and the other is ſlain, its there ſaid, its but manſlaughter in the man, and murther in the Maſter: the reaſon is, becauſe the man had no prepenſe malice to him that was ſlain.

Note, To make Homicide, it is requiſite, that the thing ſlain be in *rerum natura*: and therefore if a man kill a Child in its Mothers belly, it is not Felony, becauſe it is hard to judge, whether he killed him or not, or whether he died of ſome other cauſe, as *Stanford, folio* 20, 21.

Rerum Natura

Note alſo that in an Homicide, its requiſite that the party hurt do die within the year and a day, *Stamf.* 21.

One year and day.

If any perſon ſhall be brought before a Juſtice of the Peace, and charged with any Homicide: *viz.* Murther, or manſlaughter *per infortunium*, or *ſe defendendo*, it ſhall be his part to commit him to priſon; or at leaſt, if the cauſe will ſo ſuffer, to joyn with ſome other Juſtice in Bailment of him, to the end, that the party may be diſcharged by arraignment and triall: without which (or finding the truth before the Coroner, or otherwiſe) I ſee not how the Juſtice of Peace may ſafely diſmiſſe him. And for this purpoſe, I referre him

him to the Statute of *Glocter*, *Anno* 6 *Ed.* 1, cap. 9. *Coroner.*

Homicide juſtifiable.

THe Sheriff, Bayliff, or any other who hath Warrant to arreſt a man indicted of Felony, may juſtifie the killing of him, if he cannot otherwiſe take him, *Lamb.* 234. *Aſſ.* 22. *pl.* 55. *Indicted of Felony.*

And ſo may any other that follow Felons upon Hue and Cry raiſed, if they will not yield themſelves, but ſtand at defence, or flie away. *Fitz. Coron.* 261. *Hue and Cry. Fly.*

And ſo if a man arreſted of Felony, do as he is comming to the Goal, offer reſiſtance and flie; then thoſe who have the conducting of him may without blame kill, if they cannot otherwiſe recover him. *Lamb.* 234, 235. *Fitz. Coron.* 288. 328. *Arreſted of Felony.*

If a Juſtice of Peace come to arreſt Rioters, and they reſiſt, whereby one of the Rioters is ſlain, that is juſtifyable: becauſe the killing in all theſe caſes proceeds upon neceſſity, for the execution of Juſtice which elſe could not be done, *Lamb.* 235. *Rioters.*

So when a Goaler ſhall kill his unruly priſoners that ſhall aſſault him, *Aſſ.* 22. *pl.* 55. *Priſoners. Goaler.*

So if any attempt to rob, or murther any perſon in his dwelling houſe, or in, or near any common high-way: or feloniouſly to break into his dwelling-houſe in the night-time, and in his attempt the party do kill *Rob houſes. High-way.*

him, he shall forfeit nothing thereby, Stat. 14 *H.*8. *cap.*5. *Ass.*26. *pl.* 32. *Stamf.* fol. 13. *Lamb.* 236.

Manslaughter, or Homicide by Chance-medley.

Master and Servant.

IF the Master and his Servant fight against one, towards whom the Master hath malice, and telleth not his Servant thereof, and in that fight the Servant killeth the other man: howbeit, this be murther in the Master, yet it is but Homicide by Chance-medley in the Servant. *Plod. Com.* 101, because he could not execute the malice of the Master, whereunto he was not privie.

Stranger.

So if *Richard* and *Robert* fight together upon premeditate malice, and a stranger, having no malice, doth suddainly take the part of *Richard*, whereby *Robert* is slain: this is but Chance-medley in the stranger, *Plod. Com.* 100.

Bucklers.

If two play at Bucklers together, without any former malice, and the one slayeth the other, this is reputed to be done by chance-medley, *Lamb.*248,249.

If two fight upon suddain offence, and without any precedent malice: and in the fight the one runneth away, and the other goeth into the next house, and there catcheth a staffe, and pursueth and killeth him that fled: this was taken to be but man-slaughter by chance-medley, for the continuance of the fury which was at the first

Staffe.

without

without malice, and could not in ſo ſhort time be appeaſed, 18 *Eliz.* Report *Crompt. Lamb.* 250.

So if the one of them had broken his Sword in that fight, and had run home to his houſe, not being far diſtant, and fetched another Weapon, and had therewith killed the other. And ſo if two had born malice mutually, and be reconciled together, and then afterwards they meet, and the one challengeth the other with words of miſ-report, whereupon by agreement, they go out of the houſe immediately together into the field to fight, and there the one ſlayeth the other: for theſe and ſuch like have been taken for man-ſlaughter onely: unleſs the reſpite and diſtance of time have been ſuch, that by reaſonable conjecture, the heat of the firſt anger might in that mean while have been aſſwaged, *Lamb.* 250, 251.

Sword.

Miſreport.

If two fight by occaſion of the evill words of a Woman that is preſent: and the one killeth the other without any other malice: this is manſlaughter by chance-medley in the Woman, as well as in the ſlayer himſelf, *Fitz. Coron.* 331. *Lamb.* 251.

Woman.

If two fight upon the ſuddain without former diſpleaſure, and a ſtranger commeth to part them, and is ſlain by one of them, this is manſlaughter by chance-medley, *Fitz. Coron.* 180.

Parting an affray.

So if two fight upon the ſuddain without former malice, and one of them breaketh his ſtaffe, and a ſtander by, which is not of their company, lendeth his ſtaffe unto him, with which he killeth the other, this ſeemeth to be manſlaughter by chance-medley in the ſtander by, *Lamb.* 252.

A ſtander by.

Homicide in case of necessity.

Burn house.

IF many come to burn my House, and, I being in the same, I do shoot out and kill one of them, It is no Felony, *Ass.* 29. *l.* 23. So if some come to rob me in my House, and my Servant killeth one of the Thieves: for my House is my Castle, out of which I am not bound to flie, *Stamf.* fol. 14.

Rob my house.

Homicide *se defendendo.*

Necessity inevitable.

NOte, that the necessity must be so great, that it must be thought inevitable, or otherwise it will not excuse him, for in this case he hath not to do with a thief, but with a true man: And whether the person slain, or the person which killeth, began the affray, it is not materiall.

Flye.

When *A.* maketh an affray upon *B.* and strikes him, and *B.* flyeth as far as he can for the safety of his life, so that he is come to a straight, beyond which he cannot flie: And *A.* continueth the assault, for which *B.* doth strike again and kill him, this is Homicide *se defendendo*; for if *B.* could have avoided the said *A.* and would not, but striking him again, and killing him, it had been Felony in *B.* *Ass.* 43. *Pl.* 31. But if *A.* strike

ſtrike *B.* and if *B.* ſtrike him again but not to death, and after flyeth *ut ſupra*, and then *B.* kill him, it is no Felony, and although *B.* gave him divers hurts, it is not materiall, if ſo be he fled before the mortall wound was given, *Stamf.* fol. 15.

It appeareth, *Aſſ.* 43. *Pl.* 31. that it is no good verdict to ſay that the priſoner killed the other, *ſe defendendo*, but they muſt declare ſpecially how, *Stamf.* fol. 15. *Verdict. p.* 60.

And in theſe caſes of *ſe defendendo*, he ſhall be thus diſcharged. *How to be diſcharged.*

If he require to purchaſe his pardon, he ſhall firſt be let to main-priſe: and ſhall ſue to have the Record certified to the Lord Chancellor, who in ſuch caſe ſhall make him a Charter without ſpeaking to the King. *Stamf.* fol. 15. *b.* *Record.*

Juſtices of the Peace cannot take an Indictment of a man which killeth another *ſe defendendo*, (it ſeemeth, becauſe it is no Felonie,) *Stamf.* fol. 15, 16. *No Felony.*

And it is not material in the former caſe, though there were former malice between *A.* and *B.* unleſs *B.* do lie in wait for *A.* or do agree with him for the place for fight, or do ſtrike the firſt blow to *A.* In all which caſes the flying of *B.* afterwards to the ſtraight, will not avail or help him at all, *Lamb.* 253, 254.

Homicide by misadventure, or per infortunium.

Casting a stone.

IF a man without any ill intent cast a stone, by which meanes one is killed: or shoots an Arrow, which strikes another, and killeth him as he is going towards the mark, this is Homicide by misadventure, for which he shall have a pardon of course, but he shall forfeit his goods, as he shall that killeth another in his own defence.

Pardon. Forfeit. Unlawfull act.

If a man do any unlawful thing, and kill a man by mischance, it is Felony at this day, if not murder, *Stamf.* fol. 16. As if *A.* do strike at *B.* to part them, and is killed by *A.* or *B.* without any ill intent of either of them to kill him,

Parting such as do fight.

it is Felony in him that killeth him. And if *A.* and *B.* had an intent to kill one another, it is Felony in both, *Stamf.* fol. 16.

Note, the same order is to be observed in the pleading, verdict, forfeiture, and pardon of one that killeth another by misadventure, as hath been said of him that killeth another, *se defendendo.*

Felo de se.

Felo de se shall forfeit his goods, but not his Lands, because he cannot be attainted of the Felony, *Stamf.* fol. 19. *b.* But if a man that is frantick *de die in diem*, shall kill himself, such a man shall not forfeit his Chattels, *Stamf.* fol. 19, 20. See *Beverlies* Case. *Cook* lib. 4. fol. 124. *Attainted.* *Lunatick.*

Rape.

IF a Woman at the time of the Rape conceive with child, it is no Rape: because no Woman can conceive, if she assent not. *Stamf.* fol. 24. *Child.*

In an appeal of Rape, it is a good plea to say, that before the time of the supposed Rape, he kept and used the Plaintiff as his Concubine. 2. And to say, that although he lay with her, yet he knew her not carnally. *Appeal. Pleas. Concubine. Carnally.*

Note, If a man be charged with Rape, upon an Indictment or otherwise, he ought to be charged expresly by this word *rapuit*, and not by any equivalent words, as *Carnaliter cognovit*, *&c.* *Stamf.* 24. Stat. 6. *R.* 2. 6. gives a penalty to such as shall assent to Rape afterward, *&c.* *Rapuit.*

Larceny.

Defined.

Furtum eſt contractatio rei alienæ, plusve quam duodecem denar. valentis, animo furandi, invito illo cujus res illa fuerit. For it may be *res aliena*, and yet not to the value of one peny; which is not Felony, but petty Larceny: and it makes no matter, though the thing ſtollen exceed not 13 pence half penny, if it ſhall exceed twelve pence. Stat. *Weſt.* 1. cap. 15. *Stamford*, fol. 14. *b.*

At divers times. Twelve pence.

And note, That if any perſon hath at divers times ſtollen divers parcels of goods, which parcels being put together, do amount to above the value of twelve pence, it is more then petty Larceny, for it is Felony, for which he ſhall be hanged.

Joyntly. Severall.

The ſame Law, if two or three do joyntly ſteal goods to the value of twelve pence half peny, it is Felony in them all, and yet the Felony is ſeverall. *Stamf.* 24.

Jury. Verdict.

And although a man be indicted for ſtealing of goods to the value of twelve pence half peny, and arraigned thereupon, yet the Jury may give a ſpecial Verdict, *ſcil.* that the goods ſtollen were worth but eight pence or ten pence, and upon ſuch Verdict it ſhall be taken as petty Larceny. *Stamf.* fol. 24. *b.*

Intent.

It muſt be taken *animo furandi*, which intent he muſt have at the time, he comes firſt to the poſſeſſion of the goods: for if I deliver

deliver my goods to one who doth afterwards convert them to his own uſe, it is no Felony. *Delivered.*

But if a Tavernour put a piece of Plate before one to drink in it, and he ſhall carry it away, its Felony, becauſe he delivered not the poſſeſſion of it but the uſe. *Tavernour.*

The ſame Law is of a Butler, or Cook in any houſe, who have any Plate or Veſſel to uſe, and they carry the ſame away, its Felony, becauſe the poſſeſſion ſhall be ſaid to be alwayes in me. *Stamf.* 25. *Butler. Cook.*

So if I deliver one the key of my Chamber, and he take away my goods in the Chamber, becauſe they were not delivered unto him: So if I bargain with one to carry me certain packs of Cloth to *London*, and he takes them and carries them to *Briſtoll*, and breaks the packs, and taketh the goods, and converteth them to his own uſe, it is Felony, becauſe there is more then delivery, *ſcil.* a bargain, and he took them by the bargain, and not by the delivery, which bargain he did not purſue, *Stamf.* fol. 25. *Key of my Chamber. Carryer.*

If a Shepherd that keeps my ſheep, ſhall ſteal any of them, and convert them to his own uſe, its Felony. 3 *H.* 7. fol. 12. *Shepherd.*

If I deliver a bag of money unto my ſervant to keep, and he go away from me with it, it is Felony, for during the time he is in my houſe, or with me, that which I deliver unto him is in my poſſeſſion, as in the caſe of a Butler. But if I deliver him the bag of money to carry the ſame to *London*, to pay the ſame unto ſome man, or to buy ſomething therewith, it is not Felony, becauſe it is out of my poſſeſſion, *Stamford*, fol. 25. *Vide* Stat. 24. *H.* 8. cap. 7. *Money. Servant. Delivered.*

for Servants and Apprentices, above eighteen years imbezelling the value of forty shillings or more.

It is Felony to steal away the moveable goods of any person, as Money, Plate, Apparel, Hay, or Corn severed from the ground, Horses, Hens, or other Beasts and Birds of Domestical (or tame) nature. *Lamb.* 273, 274.

Pidgeons. *Hawks.* *Fish in ponds.*

It may be Felony also to take some that be of a wild nature: as to take young Pidgeons or young Hawks out of their nest, or ayries before they can fly. So to take Fish that be kept in ponds, 10 *Edw.* 4. fol. 15. 18 *Ed.* 4. fol. 8. *Ass.* 4. *pl.* 22. 98. 18 *H.* 8. 2. because the one by weakness, and the other for restraint cannot use their nature, and cannot forsake him that hath the possession of them, *Lamb.* 274,

Falcon. *Laners.*

But it is otherwise of Doves and Hawks that can fly at liberty (except it be a Faulcon, Terselet, Laner, Laneret, or other Faulcon by Stat. 34 *Ed.* 3. cap. 22. and 37 *Ed.* 3. cap. 19. or Partridge, Conies, Herons that are abroad,) except a tame Deere, 10 *Ed.* 4. 15. *Lamb.* 274, 275.

Tame Deere. *Wooll.*

But to take the flesh of any tame or wild Foul or Beast (that is dead,) out of the possession of another man is Felony, *Stamf.* fol. 25. And so to take the Wooll from the Sheeps back. *Lamb.* 275.

Obligation.

If a man deliver an Obligation to his Servant to keep, and he took up the money due thereby, and went away with it.

Wares.

2. If a man deliver to his Servant Wares to be sold at a Market, and he selleth them there, and goeth away with the money, both these Cases are not within the Statute of 21 *H.* 8. for in the first Case, the money was not delivered; but the Obligation, and then

then the ſervant ſtole not that which was delivered, but another thing. And in the latter queſtion, the firſt part of the former reaſon holdeth alſo, *Lamb.* 280.

But if the ſervant received 20 l. in Gold, which he changed into ſilver, and then run away with that, it had been Felony, becauſe that gold and ſilver were both but money, though divers mettals, *Dyer* fol. 5. and it ſeemeth by *Dyer* there, that if one ſervant do deliver unto his fellow-ſervant the goods of his Maſter to keep, and he goeth away with them, this ſhall be Felony within the meaning of that Statute, becauſe it ſhall be ſaid to be the delivery of the Maſter himſelf, *Lamb.* 281.

Gold exchanged.

Fellow-ſervants.

The other point concurring to make up Felony, is the carrying away, or remotion of the thing that was feloniouſly taken. In which part it ſufficeth that it be ſo far removed, that the evill minde of the taker may plainly appear. As if a gueſt will take the ſheets out of the Chamber where he lodgeth, and then go towards the Stable for his Horſe, this maketh his Felony full, although he had not carried them quite out of the Houſe, *Aſſ.* 27. *pl.* 39.

Carry away ſheets.

So if a man take an Horſe in another mans Cloſe, with a felonious intent, and be deprehended in the fault before he have led him out of the ſame Cloſe. *Lamb.* 181, 182.

Of

Of what things Larceny cannot be committed.

Savage Beasts. Fish.

IT cannot be committed in ſtealing of ſalvage beaſts, nor fiſh taken in a River, for ſuch things are, *nullius in bonis*, in the property of no man. 18 *H.*8. fol.2. But it is otherwiſe to break a Dove-houſe, and thence to take young Pidgeons, which can neither flie nor go, or to ſteal fiſh out of a pond or trunk, or to take young Goſhawkes bred in my Park, which is Felony, 18 *Ed.*4.8. So to take a tame Deere which is domeſticall is Felony, 10 *Ed.*4. fol.15. *Stamf.* fol.25.*b.* See Stat. 5 *Eliz.* cap. 21. *to be bound to the good behaviour.*

Pidgeons.

Goſhawkes. Tame Deer.

Perſonall things.

Note this, *contractatio rei alienæ*, muſt be of perſonal things: for if it be a reall thing it is not Felony, as to cut down a Tree, and carry the ſame away: but if it were cut down before, it is Felony. The ſame Law is of a box of Writings, becauſe they cannot be valued, *M.*10. *Ed.*4. *folio.*

Writings.

Treaſure. Wrecke. Strayers.

Alſo Treaſure trove, taken and carried away, wrecke of the Sea, waiſe and ſtrayes, are not Felony, *Quia dominus rerum non apparet*, *Stamf.* fol. 25. *b.*

And yet we ſee it ordinarily, that men are, and may be indicted for ſtealing of the goods of a man unknown, and the Indictment held good, *Dyer*, fol. 99. *pl.* 61. *Accords.*

Theft of a mans own goods.

GOods are delivered to one to keep, and afterwards the Baylor, (or he that delivered them to keep) takes them again felonioufly, it is Felony. And yet the property was alwayes in the Baylor, 7 *H.* 6. fol. 45. *Stamf.* fol. 26. *Property.*

What perſons cannot commit Larceny.

IF a Woman covert ſhall ſteal any thing by the compulſion of her Husband, or by the commandment of her Husband, *Quære*, *Aſſ.* 27. *Pl.* 40. *Woman covert.*

The Husband and Wife do commit a Felony joyntly; it ſeemeth that it is not Felony in the Wife: but it ſhall be taken to be the act of the Husband. *Stamf.* fol. 26. *a.* *Husbands goods.*

A Woman covert cannot ſteal the goods of her Husband, and if ſhe takes her Husbands goods, and gives them to another, it is no Felony in the donee, *Stamf.* fol. 27. *Wife delivers goods.*

But the Wife may become a Felon by her own act, the Husband not knowing thereof, as if ſhe ſteal another mans goods, or ſhall

ſhall receive the thief that ſtealeth them. *Coron. Fitz.* 383. *Lamb.* 282.

Wife. To take a Woman away with the Huſbands goods, Felony, *Crompt. Juſtice* fol. 22. 18 *Ed.* 3. 32. *Stamf.* 94. *Weſt.* 2. *cap.* 35. *De uxore abducta cum bonis viri habeat Rex ſectam de bonis ſic aſportatis, Quære.*

Robbery.

Defined. ROBBERY is when a man takes any thing from the perſon of another feloniouſly, although the thing taken be not of the value of one penny.

In my preſence. It ſeemes, that if a man take away my goods openly in ſuch a place where I am preſent, and againſt my will, it is robbery, albeit he take it not from my perſon.

Threaten to deliver my purſe. If a thief ſhall threaten me to deliver him my purſe, or elſe he will kill me, for fear whereof I do deliver him my purſe, it is robbery, as well as if he had taken it from my perſon.

Swear to bring him an hundred pound. And therefore if two or three take one, and make him to ſwear that he will bring them an hundred pounds, and if he will not, they will kill him, and afterward he doth bring them an hundred pounds accordingly, It is Robbery, *Stamf.* fol. 27.

Fear makes the Robbery. But ſome thing muſt be taken to his fear, *Lamb.* fol. 169.

Caſt away my Purſe. If thieves aſſault me for my purſe, and I in t he flight from themdo caſt it down into a buſh, upon hope to have it again, if I

may

I may escape them, and they espie it, and take it away with them, its robbery: For had they not put me in fear, I would not have thrown my money from me. *Lambert*, 268.

So if a Thief do without any expres's words, threatning, onely assault a true man for his purse, who fighting with him, and finding himself too weak, throweth down his purse, and the Thief taketh it. *Crompt.* Reports. 20 *Eliz. Lamb.* 268. *Assault wit out threatning.*

But something must in some sort be taken from the person, or else the fact will prove no robbery. For if a man do lie in wait to rob me, and drawing his Sword, willeth me to deliver him my money: and I likewise betake my self to my weapon, and thereby repel him, and take him either by fight, or by *Hue and Cry*, this will not be Felony, saith *Stamford*, agreeing in opinion with *Fenney*, 9 *Edw.* 4. fol. 26. because he took nothing from me, *Lamb.* 269. *Some thing must be taken.*

A Fisherman that travelleth by the highway with fish to sell, (*An.* 26 *Eliz.*) and meets one, who prayed to have fish of him for his money; the Fisherman refused to sell unto him, and he with force and fear took some of the Fish, and gave him money to the value and above for it, and of this the Justices thought good to be advised. But it seems to be no robbery, because he had no felonious intent. But it may be rather conceived within the Statute of 36 *Edw.* 3. *cap.* 2. & 6. forbidding Gentlemen Cators, to buy any thing against the will of the owners. Fisherman. *Gentlemens Cators.*

Two thieves attempt to rob a true man who fled from them; one of the thieves followed him in chase, and the other thief espying

espying another true man in the same highway (but out of the sight of his fellow thief) rode towards him, and robbed him, and then returning to his fellow thief. This was adjudged Robberie in both the thieves, and yet one of them was neither in sight, nor assented unto it. But because they both came to rob, and at the same time this act was committed by the one, it is worthily imputed to the other also, *Lambert*, fol. 270.

To cast money out of a window to appease thieves, saith *Cromp.* fol. 22. is robbery: *Lamb.* 261. saith, Burglary, if done in the night-time.

Burglary.

Defined. BUrglars are those who feloniously in time of Peace do break Houses, Churches, Walls, Towers, or Gates, for which he shall be hanged, although he carry away nothing, *Stamf.* fol. 30.

There are four things which must concur to make this to be Felony. 1. The time which must be in the night-time, *viz.* after Sun-set, and before Sun-rising, and the Indictment must be, *quod noctanter fregit*, *Stamf.* fol. 30. *Lamb.* 259. *Fitz. Coron.* 293. Stat. *Winch.* 13. *Ed.* 1. *The time.*

2 The place may be either publick, as the Church for Prayer, the Walls or Gates of a Town for defence, or a private house, and then it seemes to be no Burglary un-

unleſs ſome perſon be at that time within it, becauſe the Law in this caſe holdeth the Place and the perſon together, *Lamb.* 260. *The place, ſee p.143.*

If a man be abſent ſometime of the night, and no perſon in it, its Burglary, *Cock lib.* 4. fol. 40. *Some perſon in it.*

3. The manner partly in the breaking of the houſe, partly in the entring into the ſame. For if a man break an houſe to do a Felony, and enter not, it will be no Burglary, *Stamf.* fol. *Dyer* 99. But it ſeemeth, *Aſſ.* 27. *Pl.*38. that he which is taken in the attempt (onely) of a Burglary, ſhall be hanged for it, although he have not put any thing in execution throughly, *Lamb.* page 261. *The manner.*

The end and intent for which the Burglar cometh, muſt of neceſſity be, either to kill, or to rob ſome perſon, or to do ſome other Felony, *Aſſ.*22. *Pl.* 95. *Lamb.* 264. *The end.*

Now although this offence be not committed in the very body of the dwelling houſe, but in a ſtable, that is parcel thereof, and near unto it, it will be Burglary, *Brook Coron.* 180. And ſo if it be in a Barn, or in any other out-houſe that is ſo adjoyning, *Lamb.* 260. *Stable.* *Barn.*

Each Colledge in the Univerſity, each Inne of Court and Chancery, is but one houſe in this reſpect, ſo that if any Chamber or Lodging be broken in the night, and albeit no perſon be in it, if ſo be any perſon be in any part of the whole Colledge or Inn of Court, its Burglary, *Lamb.* 260, 261. *Colledge.*

If he break the houſe and do not enter, it is not Burglary: but yet to turn a key in the door, to come into the houſe by meanes of a falſe key, to put his hand over the threſhold and diſcharge a Dagg. *Enter.* *Falſe key.*

to

Window-pickers. to put back the leaf of a window, or with a Crook to hook cloaths out of a window, or if any be in the Houſe, and for fear ſhall caſt money out of a window to appeaſe Thieves, have been all taken for Burglary, *Lamb.* 261, 262. Robbery, ſaith *Crompt.* So alſo to draw a Latch and enter. *Lamb.* 262, 263.

Caſt out money.

Draw a Latch.

Hue and cry. If Thieves come to a Town by night with *Hue and Cry*, and ſhall pray the Conſtable to make ſearch for Felons, and while they go with him into an Houſe to ſearch, the thieves bind and rob both the Conſtable and good man of the houſe, in ſuch a Caſe the Entry ſhall be deemed felonious from the beginning. *Lamb.* 263.

Search.

Beat a man. If a man ſhould break and enter an houſe by night, purpoſing onely to beat a man, that is but treſpaſs, *Stanf.* fol. 30. But if it be to kill him, it is Burglary, although he did not ſo much as touch him, *Fitz. Co.* 267. And ſo it is alſo, if the purpoſe be to rob, though he take away nothing. *Fitz. Co.* 185. *Aſſ.* 22. *pl.* 39. But if it be to commit a Rape, ſome doubt, becauſe it was not Felony at the Common Law. *Lambert* 264.

Rape.

Larceny.

Larceny.

CUm autem ſic qui ſequitur, poteſt ab initio agere civiliter vel criminaliter pro voluntate ſua. Poteſt enim rem ſuam petere ut amiſſam, cum teſtimonio proborum hominum, & ſic rem ſuam conſequi, quamvis furatam, & ille qui ſitus fuerit, in hoc ei non obtemperabit poteſt accreſcere, & potere eam ut furatam, ſed note converſo, Stamf. *fol.28. Doct. & Student. fol. 163.*

Civiliter.
Criminaliter

Breach of Priſon.

STat. 1 *Ed.2. de frangentibus priſonam.* Before this Statute, if a Priſoner had broken a priſon, he ſhould have been hanged for it, although he were impriſoned but for treſpaſs, *Stamf.* fol.30.

Now then, every one who is under arreſt for Felony, is a priſoner, as well out of the Goal, as within it: and albeit he be but in the ſtocks in the ſtreet, or out of the ſtocks, in the poſſeſſion of any one who hath arreſted him, and if he make an eſcape, it is a breaking of priſon in the priſoner. For impriſonment is nothing but reſtraint of liberty.

Arreſt.
Stocks.
Poſſeſſion.
Arreſted
Eſcape.

The

Sanctuary. The ſame Law, if a man take a Church for Felony, and make an eſcape thence, *quia fuit quodamodo in priſona, i.e.* under the keeping of the Town, 1 *Lamb.* fol. 30.

Stranger. If a ſtranger do it, he is within the compaſs of this Statute, becauſe by the common

Eſcape. Law it was a debruſement in the ſtranger, and Felony. And it is Felony alſo at this day in the priſoner, who eſcapes by meanes of ſuch breach made by a ſtranger, *Stamf.* fol. 30. *b.*

Goaler. But if a Goaler, or any other who hath a priſoner under arreſt, ſhall ſuffer him to go at large, it is no Felony in the priſoner: but all the Felony in ſuch a caſe reſteth in him who ſuffereth him to eſcape, and that by way of voluntary eſcape (and not by way of debruſement) which is Felony in him who ſuffereth him to eſcape, *Stamford*, fol. 31.

Eſcape.

Negligent Eſcape. But it is otherwiſe of a negligent eſcape: for then is Felony in [illegible] eſcapes, and Felony in him, out of whoſe cuſtody he doth eſcape: Becauſe the priſoner in doing thereof doth break priſon, *Stamf.* fol. 31.

Note: *Frangere Priſonam*, is intended, as well of a Reſcue as a debruſement: as when the priſoner is under arreſt, and a ſtranger

Reſcous. will felonioufly take him out of the poſſeſſion of him that arreſted him; This Reſcous is a breach of Priſon, as well in the Felon that thereby doth eſcape, as in him who cauſed the eſcape, *Stamf.* fol. 31.

Diſturb the Arreſt. But if a ſtranger ſhall diſturb the arreſting of a Felon, ſuch manner of Reſcue ſeems to be no Felony, *Fitz.* Juſtice of Peace, *fol.* 28. Such arreſting being diſturbed, ſuch he, is Felony, although he were arreſted inuced, *Quare.*

Note,

Note, the return of the Rescue of a Felon (by the Sheriff) taken out of his possession, will not serve as an Indictment to put the party to answer thereupon. And the reason is, because Stat. 25. *Ed.* 3. cap. 4. *De proditionibus*, saith, None shall be imprisoned or outed of his Freehold, without presentment, or originall Writ, *Stamford*, fol. 31.

Answer.
Rescue.
Presentment.

The Statute is further, *Nisi causa, pro qua captus, & imprisonatus fuerit, tale judicium requirit.* And therefore at this day, if one be attached and taken for trespass, and he that is attached escape, or be rescued by a stranger, it is but fineable: but the fine shall be according to the quality of the person from whom such rescue is made, and therefore if a Justice assigned, arrests a man that shall make an affray before him, and a stranger rescue him, in that case as well the prisoner as he that made the Rescue shall be disinherited, and perpetually imprisoned: because the attachment of Justice was in Law, the attachment of the King himself. But it seemes, if such Justice makes an arrest when he is out of his place, it is but fineable, and is no more then if the Sheriff had arrested a man, *Stamf.* fol. 31. *b.*

Trespass.
Fine.
Quality of the Person.
Rescue.
Disinherited.
Imprisoned.

These words (*Judicium requirit*) shall be intended as well in the preter-tense, as in the present (*i.e.*-as well of judgment given, as of judgement to be given: and therefore if a man be rescued from the gallows, or when he is going to execution, it is within the compass of this Statute. *Stamf.* fol. 32.

Preter tense.
Present tense
Gallowes.
Execution.

The words of the Statute are further, *Nisi causa pro qua, &c. tale Judicium requirit, si de illa fuit convictus.* By this, it seemes it

Attainted.

is

is not material, if the Prisoner who escaped, be, or shall be attainted of the Felony for which he was imprisoned, if he were committed for Felony at the time of the deburſement.

Tryed before the Principal.

And a stranger that had rescued one that was indicted of Felony, was indicted and arraigned therefore presently; before the principal Felony was tried, and found, *Stamf.* fol. 32. *a. b.*

Confession. Coroner.

Note, that the Confession of breach of Prison before the Coroners, is an attainder in it self without any more, *Stamf.* fol. 12. *b.*

Escape.

One *J. R.* taken upon suspition of Larceny, was by the Constable delivered unto the possession of *I. W.* and escaped out of his possession for want of good keeping, and *J. W.* indicted for the escape, *Ass.* 42. *pl.* 5. and not the Constable.

Voluntary Escape, pag. 142.

THere are two manner of escapes, 1. Voluntary, and 2. Negligent: Voluntary is when one hath arrested another for Felony or other crimes, and doth afterwards suffer him to go whither he will, this letting of him go, is a voluntary escape.

Felony. Treason.

And if the Arrest of him who escapes were for Felony, it shall be Felony in him that suffers him to escape: if he were arrested for Treason, it shall be treason, if for trespass, it shall be trespass, *Stamf.* fol. 32.

Trespass.

Escape

Eſcape for petty-Larceny. *Pult. de pace, & fol.* 44. *Sect.* 10. *Cromptons* Juſtice of Peace, fol. 28. *b.* ſaith, it is not Felony, becauſe Petty-Larceny is not Felony of death, neither is it in caſe of *ſe defendendo*, nor *per infortunium*. *Petty-Larceny.*

Negligent Eſcape.

NEgligent Eſcape, is where one is arreſted, and afterward eſcapes againſt the will of him that arreſted him, and is not freſhly purſued and taken before the purſuer loſeth ſight of him. *Purſued. Loſt ſight. Eſcape.*

This ſhall be judged a negligent eſcape, notwithſtanding he, out of whoſe poſſeſſion he did eſcape, takes him again after he hath loſt ſight of him. *Stamf.* fol. 33.

And the ſame Law it is, if the taker of him, loſe not ſight of him, if it be ſo that he kills him in the purſuit. And the reaſon thereof is, becauſe by ſuch negligence the Priſoner cannot be attainted of Felony, and ſo the King ſhall be at loſſe, *Stamf.* 33. *Kill him. Attainted.*

If the Goaler licenceth his Priſoner to go unto another Town, and come again; it is an eſcape, becauſe the Priſoner was found out of the bounds of the Priſon, *Stamford*, fol. 33. *Goaler Licenceth.*

One who is not Mayn-prizable, is let to main-prize, it ſhall be ſaid to be a negligent eſcape in him who letteth him to Main- *Mainprize.*

Mainprise, *Stam.* fol. 33. *b.* But by Stat. 1. and 2. of *Phil.* and *Mar.* cap. 13. the Justices of Goal-delivery may fine him.

Trespass. Escape *Non adjudicabitur versus eum qui commissus est prisonæ pro transgressione.* For by the Common-Law, no escape shall be said, but of such an one as is in prison for Felony. And yet in *Fitz. Coron.* 430, 431. escape was adjudged for one who was in prison but for petty Larceny, *Crompt.* fol. 25. *contra.*

Petty-Larceny.

Sheriff. Cepi corpus. The Sheriff returns upon a *Capias* to arrest one for Felony *Cepi corpus*, and had not the body at the day; in this case he shall be amerced at 100 shillings, because upon this matter of Record it shall be taken as an escape, *Lamb. Stamf.* fol. 33.

Amerced. Record. Suspition. A man being arrested upon suspition of felony suffered to escape, and the Constable and others in whose keeping, *&c.* put to answer, *Crompton*, Justice, fol. 26. *a* 43 *Ed.* 3. fol. 36.

Escape without arrest.

Town. Charged. IF one be murthered in a Town by day, and the murtherer escape, and is not taken or arrested by the Town, those of the Town shall be charged with this escape, *scil.* they shall be amerced for it.

Amerced. Misadventure. Se defendendo. The same Law is, If a man be slain by misadventure by another, or *se defendendo*, and escapes, because they are not to judge whether it be Felony, or not.

The

And as it is of a Town not walled, by day; so it is for a City, or walled Town, by night: for, in such Case, be a man slain by day or night, and the Murtherer escape, the City shall be amerced; because, by the Statute of *Winchester*, *Anno* 13. *Edw.* 1. a City, or walled Town, must be shut from Sun-set to Sun-rising. And this Law is confirmed by *Stat.* 3. *H.* 7. *cap.* 1. If any be slain in the day, and the Murtherer escape, the Town shall be amerced. And the Coroner, and Justices of the Peace, have power to enquire of such Escapes; and shall certifie the same into the King's Bench. And so note here, That an Escape shall be adjudged; and yet there is no arrest proceeding. *Stamf.* fol. 34.

City.
Sun-set.
Sun-rising.
Coroner.
Justices of Peace.
Enquire.
Certifie.

Upon what Persons an Escape shall be charged.

THe Sheriff's Bailiff arrests one, for felony in a Town, and carries him to Prison; and the Inhabitants of the Town go with the Bailiff to assist him, and the Thief in going escapes: in this Case, the Escape shall be adjudged upon the Sheriff. *Stamf.* fol. 22.

Bailiff.
Sheriff.

But it is otherwise, if the Prisoner be delivered to the Inhabitants of the Town, to carry him to Prison.

Inhabitants.

One is arrested for Felony, and brought to the Hundred's Court, and they bid him go, and seek one to Warranty, *viz.* one, that will vouch the sale of the goods to him; and he goes, and takes Sanctuary, and abjures, and it was adjudged an Escape upon the Hundred.

Sanctuary.
Hundred.

If a man be slain out of any Town, and the Murtherer escape, the Hundred shall be charged. *Stamf.* fol. 34. *b.*

Town. Or, if the Town be not ſufficient to anſwer the Amercement for the Eſcape; then

Hundred. the Hundred ſhall be anſwerable: and, for

County. inſufficiency of the Hundred, the County ſhall be charged. *Stamf.* fol. 34. *b.*

The Town to be charged with a Priſoner. If the Conſtable brings a man to the Goal, and the Goaler will not receive him; the Town, where the Conſtable dwells, ought to be charged with the keeping of him untill the Goal-delivery. *Stamf.* f. 34. *b.*

Reſcued. If a Felon be reſcued from the Sheriff, an

Eſcape. Eſcape ſhall not be adjudged againſt him: becauſe he hath no remedy. *6 Hen.* 7. fol. 12. 10. *Hen.* 7. fol. 26, 28.

Eſcape. If one be ſlain in the evening, and eſcape, (by the Common Law) the Town ſhall be amerced. *Coke*, lib. 7. fol. 6.

Traitors. If Traitors break a Priſon, it ſhall not diſcharge the Goaler of Eſcapes; but of the King's enemies it is otherwiſe, becauſe he can have no remedy, *Coke*, lib. 4. fol. 125. *Beverlie's* Caſe.

Sheriff Negligent. If a Felon eſcape, the Sheriff ſhall be anſwerable for it, and ſhall be puniſhed for a

Goaler wilfull. negligent eſcape, if it were without his privity. But the Goaler for a wilfull eſcape, ſhall be adjudged a Felon. *Dalt.* Sheriff, fol. 187. *b.*

Conſtable. A Felon delivered to the Conſtable and four others, and ſuffered to eſcape, the Conſtable and the four others were indicted. *Crompt.* Juſtice, fol. 26. a. 43. *Edw.* 3. fol. 26. accords.

Four men do convey a Felon. A man is ſent to Priſon by four of the Town, and the Priſoner makes reſiſtance, and is ſlain by them, it is an eſcape, and all the Town ſhall be amerced. *Crompt.* (Juſtice, fol. 26.) accords.

Conſtable. In the Articles of Enquiry of the King's Beach, one is, Of Priſoners that eſcape out of

of the keeping of the Conſtables of a Town, by negligence of keeping, where, and when, and out of whoſe keeping, and what they were. *Aſſ.* 271. *pl.* 44. in the Articles of Enquiry in the King's Bench.

How an Eſcape ſhall be Tryed, and Judged.

NOte, There is a *Priſoner* by matter of *Record*, and a *Priſoner* by matter in *Fait*. *Priſoner* by matter of *Record* is, when one, being preſent in Court, is committed to Priſon by the Court: and in this Caſe, if the Keeper of the Priſon hath not the Priſoner ready at all times, when the Court demands him; or cannot ſhew reaſonable cauſe, wherefore he cannot produce him forth, the Court ſhall adjudge an Eſcape upon the Keeper, without enquiry. *M.* 3. *H.* 6. fol. 33. *Record.* *Fait.* *Ready.*

The ſame Law is, where one is committed in the King's Bench to the Ordinary as Clerk, without making his purgation: and is afterwards taken and brought into the King's Bench, and all this matter there declared, and the Court demands him, if he be the ſame perſon, and he ſayes, Yes. In this caſe, the Court ſhall award a *Scire facias* againſt the Ordinary, to anſwer, why an Eſcape ſhall not be adjudged againſt him. 27 *H.* 6, 7. Contrary; if he had been committed to the Ordinary by another Court, than the King's Bench: for in ſuch Caſe, without having the Record before them, they could not grant the *Scire facias*. *Stamford*, fol. 34. *Ordinary.* *Scire facias.* *Ordinary.* *Record.*

The ſame Law is, if it be found in the Coroner's Roll, that one fled to the Church, *Coroner's Roll.*

and no abjuration is mentioned in the Roll; in this Case, the Court shall adjudg an Escape upon the Town without presentment.

Traverse. Note, That to such as are Prisoners of Record, the Keeper of that Prison cannot Traverse the Escape: but must confess, and avoid it, as by saying, The Prison was burnt, or broken by enemies; or to say, that he, who is supposed to be escaped, is not the same prisoner, that was committed unto him. *Stamf.* fol. 35. *a.*

Arrest. Prisoner by matter *in fait* is, when one is Prisoner by arrest onely, either of the Sheriff, Constable, or any other: there the Escape shall be presented, before he shall answer to it. *West.* 1. cap. 3.

Justices of peace enquire. Justices of Peace by Stat. (1 *R.* 3. cap. 3.) may onely enquire of the Escape of such as are arrested, and imprisoned for Felony. *Stam.* 35. and by Stat. (*H.* 7, cap. 1.) they may enquire of the Escapes of a Murtherer, and not taken by the Town.

Arrested.

Fineable. And note, That for an Escape, which is not fineable, but amerceable, he, or those that are charged, shall not traverse the Presentment; *Quia de minimis non curat Lex. Stamf.* fol. 35. *b.*

Amerceable.

Traverse.

Presentment.

The penalty of an Escape.

Voluntary. THe penalty of an Escape, (if it be voluntary) is the forfeiture of all, that a man may forfeit; because it is Felony. *Stamf.* fol. 35. *b.*

Negligent. The forfeiture of a negligent Escape is but fineable.

Never arrested. The forfeiture of an Escape of him, who was never arrested, is but an Amercement. See Stat. 3. *H.* 7. 1.

But

But in these Forfeitures is to be understood the escape of Felons; and not others: for, if one strike another, and be arrested by the Constable, and by him let go, and afterwards the Party, who was stricken, die within the year and day; yet this shall not make the Constable a Felon, because it was not Felony at the time of the Escape. *Felons.* *Constable.* *Year and Day.* *The Time.*

But yet he shall make Fine to the value of his Goods; because the Escape was voluntary, and upon an heynous offence before committed. *Fine.* *Voluntary.* *Heynous offences.*

The same Law is, where a man is arrested for Heresie, and he escapes, or breaks Prison, before he be acquitted before the Ordinary: his Goods and Chattels, which he had the day of such Arrest, are forfeited to the King; and the Profits of his Lands, from the day of Arrest, untill he shall render himself to the Person from whom he escaped: and the Justices of the King's Bench, Justices of the Peace, *&c.* have power to enquire of all such Escapes, and breaches of Prison, by Stat. 2. *H.* 5. cap. 7. *Rep.* 1. *Edw.* 6. 12. 1. *Eliz.* 1. *Stamf.* fol. 35. *b.* *Heresie.* *Ordinary.* *Arrests.* *Goods.* *Lands.* *Render.* *Justices of Peace.*

Note, That the Fine of the negligent Escape of one attainted of Felony, is an hundred pounds: but, if he be Indicted, and not attainted, an hundred shillings. *Negligent fine, 100 l.*

Quære, If he be taken but upon suspicion of Felony, whether the escape be dispunishable. 43 *Edw.* 3. 36. *Suspicion.*

By the Stat. of *Winchester*, 13 *Edw.* 1. if a man be arrested in the day-time, and the Thief escape, and not taken within half a year, the Town, or Hundred (respectively) shall answer the Party robbed, and Dammages. *Stamf.* fol. 35, 36. *Hue and Cry*

A man fled to an house, having committed Felony, and another came to the house being shut, and attached him by word onely, and was never in his custody; and he after escaped: this is not any Escape, *Ass.* 27. *pl.* 9. *Et sic vide*, it is no Arrest. *Crompt.* Justice, fol. 26.

House-burners.

Such as burn Houses feloniously, are Felons by the Common Law.

Barn. One was indicted for burning of a Barn feloniously in the night-time; and, because it was adjoyned to a Dwelling-house, it was held to be Felony by the Common Law, and the party was hanged. M. 11. *H.* 7. fol. 1. and *Stamf.* 36. *Crompt.* 23. So to burn a Mow of

Corn in Stacks. Corn, or in Stacks. *Barton*, fol. 16. *Stamf.* 36. *Crompt.* 23*b*.

Misprisions.

Defined. Misprision is properly, when any one knowes that another hath committed Treason, or Felony, and will not discover it unto any Magistrate; but conceals it. And 2 *R.* 3. fol. 10. it was agreed; that, when any one is Attainted of Misprision, or of Trespas, the Justices, before whom he is Attainted, shall take Surety and Pledges for his Fine,

Surety. Fine. King. and afterwards shall Assess it by their discretion, and not the King himself. *Stamf.* f. 37. *b.*

Money. If false money be made within the Realm,

Treason. or any member thereof, and a stranger doth utter the same, *&c.* it is not Treason in the stranger, because the Statute, 25 *Ed.* 3. *De Proditionibus*, doth not extend thereunto:

for

for the Statute is, *If any do bring falſe money into this Realm.* In ſuch Caſe, although it be not Treaſon in the Stranger, yet it is Miſpriſion; *ut patet*, 3 *H.*7. fol.10. *Stranger. Miſpriſion.*

And in theſe Caſes of Miſpriſion, he ſhall forfeit but his Goods; and his Lands, but for term of his life, and according to ſome, but the Profits of his Lands, and ſhall be perpetually Impriſoned during his life. *Stam.* fol. 38. *Forfeiture in miſpriſion.*

And 22 *Ed.* 3. fol. 13. one did but draw his Sword to have ſtricken a Judge aſſigned, ſitting in Judgement, and being found guilty, had judgment to forfeit his Lands and Chattels, and his right hand to be cut off. *Strike a Judge. Lands. Chattels. Hand.*

The like Law, to ſtrike a Jurour in the Juſtice's preſence. fol. 38. *Jurour.*

If a Ribauld ſtrike a Knight, or any other Honourable man, he ſhall loſe his hand, with which he ſtruck him. *Stamf.* fol. 38. *Ribauld ſtriking Knight.*

Acceſſaries before.

IF one ſhall procure, or command another to commit a Felony; but ſhall not be preſent when the other doeth it; this commandment, or procurement, is but an Acceſſary. *M.* 10. *Ed.* 4. fol. 14. For, if he be preſent at the committing of the Felony, he is a Principal. 21 *Ed.*4. fol. 71. *Acceſſaries before. Defined.*

All ſuch, as come in company in any place, or any Aſſembly, where any evill is committed; be it Homicide, Robbery, or other Treſpaſs: every ſuch one ſhall be taken for a Principal doer; albeit he went aſide, and did nothing. *Stamf.* fol. 4. *b.* *Principall defined.*

But, if one happen to be preſent when another is ſlain, or when a Felony is committed, *No miſpriſion but fineable.*

mitted, and came not in company of the Felons, neither was of their Confederacy: albeit he did not reſiſt or diſturb the Felon, nor raiſe Hue and Cry, yet he ſhall neither be Principal, nor Acceſſary; for it is not Felony in him, but fineable as Treſpaſs. *Stamf.* fol. 41. *b.*

Exceeds a Command.

If I command one to apprehend another, and he goeth from me, and takes him, and robbeth him, if I be abſent when he doeth it, it is no Felony in me; becauſe he exceeds my Command: and my Commandment might have been performed without robbing of him.

To beat.

But, if I command one to beat another, and he beat him to death, it is Felony in me that commanded; becauſe it is hard to beat a man ſo, that he may be ſure he will not die: and therefore, in ſuch a Caſe, I am acceſſary to him, that killeth him. *Stamford*, fol. 41.

An Adulterer doth counſel the Mother to kill her Childe, when it is born: he is an Acceſſary before; though the Childe be not born. *Coke*, *lib.* 7. fol. 9. *George Parker's* Caſe, in *Dyer*, fol. 186. *Pl.* 3. In which place *Parker* was indicted by the name of *George Parker* Yeoman: and the Note of *Dyer* ſaith afterwards; that, albeit he was a *Clerk*, yet he was hanged *pro procuratione prædicta*. But it appeareth not on Record, that he was a *Clerk*.

Parker's Caſe, pag. 129. *infra. Clergie.*

Another manner.

Albeit the Chief Offender do not accompliſh the fault, altogether in the ſelf-ſame ſort it was before-hand agreed and plotted; yet, if any Felony fall out by that attempt, either againſt the ſame Perſon, or another, he ſhall be taken to be acceſſary: As; If a man hire one to poyſon another, and he killeth him with a Sword: this

Pro-

Procurer is acceſſary to the Murther, becauſe the other evill is but a ſequel of the former; which was commanded by him, and attempted by the other. *Lambert*, 286, 287.

So if one procure another to kill a man in the field, or at ſuch a time and place, and he killeth him in the Houſe, at another time and place, then was agreed: Becauſe their wicked purpoſe is effected, though by another Mean, or Circumſtance, then was ſet down between them. *Ployd.* Com. 475. *Lamb.* 287. *Procure to kill one.*

But if one do conſpire with another, that the one ſhall burn the Houſe of A. and he burneth the Houſe of B; or that he ſhall ſteal the Horſe of A. and he ſtealeth his Oxe; or that he ſhall rob A. in the High-way, and he robbeth him Burglarily in the night-ſeaſon in his houſe: the other is no Acceſſary; for that they be in other things, or of other kindes, then were intended. *Ployd.* Com. 475. *Burn Houſe.* *Steal.* *Rob.* *Other things*

And, which is more ſtrange, if the Husband conſpire with another to poyſon the Wife; and he, for that end, procureth, and bringeth Poyſon to the Husband, who tempereth it with an Apple, and giveth it to his Wife; and the Wife doth deliver it to her Daughter, who eateth it, and dieth; Yet that other Perſon is no Acceſſary to the Murther, that the Husband committed: becauſe it is a diſtinct thing from that, which he purpoſed. *Ployd.* Com. 476. *Sander's* Caſe. *Poyſon another.*

Now, in all theſe Caſes of Acceſſaries before, it is neceſſary; that the Commander, Procurer, or Conſpirer, do continue his mind *Continue his minde.*

mind and purpoſe, untill the Felony be fully done: *Lamb.* fol. 288.

Repent. Give notice. But it is otherwiſe, if he ſhall repent him of his malicious mind, and thereof give notice to the other, and withall charge him, that he make no ſuch attempt; and he doth nevertheleſs bring the ſame to effect: then ſuch Commander, or Procurer, is no more Acceſſary to the fault, then if he had never imagined, or thought upon it. *Ployd.* Com. 476. *Lam.* fol. 289.

Knowing of a Felony intended. Alſo *Lambert* was of Opinion; That, If a man know a Felony intended to be committed, and do conceal it, and thereby ſuffer it to paſſe, and it be effected: he cannot be made an Acceſſary thereby; unleſs he have uttered ſome Conſent, or given ſome ſign, or Approbation, of his Allowance of it.

Miſpriſion. But rather that his Concealing is a Miſpriſion, (or Contempt) for which he ſhall be fined: even, as if it happened him to be preſent at the doing of a Felony (whereof he neither had knowledge, nor came therefore, nor gave ayd thereunto) and would neither *Diſturb. Hue & Cry.* diſturb the Felony, nor levie Hue and Cry after him. *Stamf.* 40. *Fitz. Coron.* 395. *Lamb.* 289.

Petty-Larceny. No Acceſſary to petty-Larceny; as *Humphrey Davenport* ſaid at *Exceter*-Aſſizes, 10. *March, An. 9. Caroli.*

Acceſſaries after.

An Acceſſary after. Defined. IF one receive a Felon, well knowing the fact, which he hath committed, and doth favour, or aid him; by this he ſhall be ſaid to be an Acceſſary.

But

But we muſt diſtinguiſh of *Aid*. For, if he Aid him by his good word, and ſue for his deliverance, or ſend a Letter in his behalf; this makes him not Acceſſary to the Felony. *Suit.* *Letter.*

And this Definition of an Acceſſary extendeth onely to ſuch, as are Acceſſaries to a Principal, which is not Attainted. *Stamf.* fol. 41. *b.* *Not attainted.*

For after the Attainder, if he had received him, he ſeemeth to be an Acceſſary, although he know not of the Felony committed; if it be in the ſame County. *Ibid.*

And Note, By the Common-Law, if one commit Felony in one County, and, before his Attainder, another receiveth him feloniouſly in another County; that was no Felony in the receiver, for want of Tryal: becauſe thoſe of the County, where the Acceſſary offended (before the Statute of 2 and 3 *Ed. 6. cap.* 24.) could not have Conuſance of the principal Offence committed in another County. P. 33. *Ed.* 3. fol. 17. *Stamf.* fol. 41. *b.* *Another County.*

Note, A man ſhall not be Acceſſary for receiving of the Goods onely; if he do not receive the Felon himſelf. *Stamford*, fol. 43. *b.* *Receive Goods onely.*

If a man do upon Hue and Cry, arreſt a Thief, and do then with an evil mind take the Goods, and ſo let the Felon go: he is to be arraigned for it, as an Acceſſary to the Felony; if not, as a Principal Felon. *Aſs.* 27. *pl.* 2. *Lamb.* 290. *Take Goods.* *Acceſſary.*

If a man purſue, and take a Felon, that hath ſtolen his Goods, and ſuffer the Thief to go at large; he is no Acceſſary thereby: for he may *agere civiliter*, or *criminaliter*, at his own pleaſure: but if he take money of the Thief, to the end, he ſhall not give *Acceſſary to his own Goods.*

Evidence

Evidence against him, whereby the Thief escapeth; then he is become accessary to the Felony of his own Goods: because it is done with a minde to comfort a Felon in his evil-doing. *Lamb.* fol. 290.

Bailed. To receive, harbour, or relieve with Mony a man, that is bailed for Felony, and bound to appear for his Trial, is no Accessary: Neither will it make a man accessary, to receive

Buy stolen goods. or buy the Goods, that he knoweth to be stolen: unless he do receive the Thief, that stole them. 9 *H.* 4. 1. *Fitz. Coron.* 126, and 208. *Lamb.* fol. 291.

Accessary to an Accessary As one may be accessary to a Principal Felon; so may another be accessary to that Accessary also. For, if one do feloniously receive, or comfort him, that is an Accessary, he is fallen into an equal danger with him; and is called an *Accessary to an Accessary*. Ass. 26. *pl.* 51. *Fitz. Coron.* 196. *Lambert*, fol. 191.

In the Judgment of an Accessary, Nature is not allowed her excuse. For (*Fitz. Coron.* 427.) a Felon fled to the house of his Naturall Brother, who shut the door against him,

Brother. Shut the door. that pursued the Felon; and conveyed him out of the house by a back-door, whereby he got to a Church: and his Brother was adjudged an Accessary for it. *Lamb.* fol. 491.

Wife. But a Woman cannot be accessary to her Husband; though she do both receive, and comfort him, and knowes of the Felony, and also cover the fault, that he hath done. *Lamb.* fol. 291, 292. *Fitz. Coron.* 383.

General Rule. Felony at the time. In all Cases of an *Accessary-after*, this thing is requisite, That the fact, to which he is accessary, be a Felony at the very time he becommeth an Accessary to it. For, if a man do give a mortal wound unto another upon the first day of *August*, and a third person, knowing

knowing thereof, receiveth him, two or three dayes together, and letteth him go; and then afterwards he, that was ſtricken, dieth of the wound within the year and day: yet this receipt maketh not the other an Acceſſary; becauſe the Principal fact was then no Felony. *Lamb.* fol. 292.

If a man be charged as a Principal Felon, and upon Tryal be acquitted thereof: yet may he be an Acceſſary thereunto, after the offence; though not before. *Fitz. Coron.* 200. and 463. *Stamf.* pag. 105. *Lamb.* fol. 292. *Both Principal and Acceſſary.*

To receive an Approver (knowing him to be ſo) will make a man acceſſary to the Felony, that he hath confeſſed. But, that a man ſhall be acceſſary to a man not attainted in the ſame County upon Record, is extremity, and doubtful. *Lamb.* fol. 293, 294. *Approver. Acceſſary.*

The Principal ſhall be firſt Attainted.

THere be two manner of Attainders: the one upon Appearance; 2. The other upon Default. *Two ſorts of Attainders of acceſſaries.*

1. The Attainder upon Appearance is, *Upon Appearance.*

1. By Confeſſion. 2. By Battail. 3. By Verdict.

2. The Attainder upon default is by Proceſs. *Upon Default.*

By the antient Law the Acceſſary ſhall not be put to anſwer, untill the Principal were attainted; (44 *Edw.* 3. fol. 7.) But now the Law is altered: for now (whether the Principal do appear, or not) the Acceſſary, if he appear, ſhall anſwer.

But, if he plead to Iſſue, the Proceſs ſhall ceaſe to be awarded againſt the Enqueſt, untill the Principall appear, or be attainted by *Plead to Iſſue. Enqueſt. Attainted.*

Proceſs. by Proceſs; but yet this Proceſs againſt the Enqueſt ſhall not ceaſe, except the Acceſſary will. For, if the Acceſſary will deſire Proceſs againſt the Enqueſt, before the Principal be Attainted, he ſhall have it; becauſe none is damnified thereby, but himſelf. And, if he be thereupon attainted, or quitted, it is good, and he ſhall not be arraigned again. For the taking of the Intereſt is not erroneous. *Stamf.* fol. 46. *b.*

Deſire. Enqueſt.

Both appear. Anſwer. But if both appear, *ſcil.* the Principal, and Acceſſaries: then the Principal ought firſt to anſwer; and afterwards the Acceſſaries. For the Principal may give ſuch an anſwer, that the Acceſſaries may not be put to anſwer, untill the Anſwer of the Principal be tried: and that is where the Principal doth not plead directly to the Felony, but another Plea; as if he plead *auterfois acquit, &c.* In this Caſe, the Acceſſary ſhall not be put to anſwer, untill the Iſſue be tryed; as 5 *H.* 7 fol. 19. But if the Principal do plead to the Felony, then the Acceſſary ſhall plead preſently after. *Stamf.* fol. 46. *b.*

Tried.

Another Plea. Iſſue tried.

Plead.

All Principalls appear. Note, when I ſpeak of Principals, you muſt not underſtand all the Principals. For, if divers be ſued as Principals, and ſome do appear, and ſome do not; yet the Enqueſt ſhall tarry, till all the Principals come, or ſhall be attainted by Proceſs; if it be ſo that he be appealed, or indicted, as Acceſſary to them all: but it is otherwiſe, if he be indicted but as Acceſſary to ſome of them. For, in that Caſe, it ſufficeth to have thoſe Principals onely to come, or to be attainted, to whom he is indicted as Acceſſary, without having regard to others. *Stamf.* fol. 40.

Some onely.

Dye after Attainder. Alſo it ſeemeth, if the Principal after this Attainder ſhall dye, and the Juſtices, before whom the Acceſſary is ſued, have the Re-

cord

cord of his Attainder before them; that then they may proceed with the Acceſſary: elſe not. *Stamf.* fol. 47. *Record.*

But, put Caſe the Principal come and ſtand mute, or ſhall challenge above thirty ſix; yet the Acceſſary ſhall not take advantage of theſe Errors. *Quare. Stamf.* fol. 47. *Mute.*

Where the Acquitall of the Principall ſhall diſcharge the Acceſſary, and where not.

IF the Principal be found not guilty, the Acceſſary is thereby diſcharged. For, *Ubi eſt factum nullum; ibi fortia nulla.* Or if the Principal cannot be tryed, but dieth in Priſon, before he be Attainted. But it is otherwiſe, if he die after he is attainted. Or, if the Principal procure his Pardon. For when the life of the Principal is given him, any manner of way, by Law; the Felony is extinct in his Perſon, and by Conſequence acquitted. And ſo it ſhall be, where the Principal hath his Clergie. 3 *H.* 7. fol. 1. *Sed diſtinguendum eſt*, in the Caſe of Clergie: *ſcil.* whether he be Clerk *convict*, or Clerk *attainted*. For, if he be Clerk Attainted, by the antient Books he ſhall be hanged; becauſe the Principal, in ſuch Caſe, can never make Purgation: But otherwiſe it ſhould be, if he were but Clerk Convict; becauſe a Clerk Convict may make Purgation. And therefore they uſually do bail the Clerk Convict, untill the Principal hath made his Purgation. *M.* 13. *Edw.* 4. fol. 3. And upon his Purgation do diſcharge the Acceſſary. *Sed quare*: for now he ſhall not make. *Non Culp.* *Dieth before Attainted.* *Pardon.* *Clergie.* 1 *Convict.* 2 *Attainted.* *Purgation.* *Bayl.*

make Purgation; but ſhall forthwith be delivered, by Stat. 18 *Eliz. Stamf.* fol.48.

Clerk Convict. If the Principal have Clergie before Judgment, (he is called *Clerk Convict*); the Acceſſary is diſcharged thereby. *Coke, lib.* 11. fol.35. *Coke, lib.*4. fol.43,44.

Main-prise and Bail.

Acceſſary. THe Acceſſary is repleviable by the Common Law, untill the Principal be attainted; but not afterwards. *Stamf.* fol.71. *Weſt.* cap.15. *Edw.*3.1.

Not Baylable
1 Utlaws.
2 Provers.
3 Abjured Perſons.
4 Taken with the manner.
5 Breakers of Priſon.
6 Openly defamed, as by Hue & Cry.
7 Such as are appealed by Provers living.
8 Treaſon.
9 Murther.
10 Houſe-burners.
11 For falſe money.
12 Counterfeiting of the King's Seal.
13 Excommunicate Perſons.
14 For manifeſt Offences.
15 The King's Command.
16 The Judge's Command.
17 *Maihem.* If it be grievous & mortal. *Pulton*, De pace, fol.16. ſect.63. *P.6. H.7.* fol.7.
18 Burglary. *P.6. H.7.* fol.1. *Pult.* De pace, fol.16.63.
19 If a man be attainted of Felony by Verdicts, he is not Baylable. *Pulton*, fol.174. ſect.12,15. *H.7.* fol.9.
20 If a man be found guilty of Homicide before the Coroner, *Dalt.*p.275.

Not Baylable

21 If

Not Baylable

21 If a man confeſs Manſlaughter upon his Examination. *Dalt.* 272.

22 Nor in Robbery. *P.6. H.7.* fol.1.

23 Nor he, which is Indicted of Felony, *Lamb.* p.347. *Aſſ.*41. pl.30.

24 Nor he, which confeſſeth the Felony, whereof he is accuſed. *Lam.*p.347.

25 *Regula*, The Juſtice of Peace cannot meddle with the Bailment of any Priſoner; except he be Priſoner for ſuch a cauſe, whereof the Juſtices of Peace be competent Judges. *Lamb.* p.347,348.

26 Acceſſary to murther. *Coke*, Of Bail, fol. 13.

27 Nor Perſons ſuſpected of Murther. *Coke*, Of Bail, fol.13.

28 Nor acceſſary to Felons attainted. *Coke*, Of Bail, fol.15.

29 If a Priſoner, after he hath pleaded *Not guilty*, be attainted by Verdict, that he killed a man, *ſe defendendo*, or *per infortunium*; yet he ſhall not be Bailed. *Dalt.* 274. *Stamf.* fol.15. Stat. An. *6. Edw.* 1. cap. *9.* but this Statute, I conceive, meaneth by Writ unto the Sheriff. *Quære.*

30 If a man be acceſſary unto two, and the one Principal is attainted, though the other be not; yet the Acceſſary ſhall not be bailed. *Dalt.*275.4.*Ed.*3. f.28. *Stamf.* fol.17. c. *Brook*, Mainprise, 58.

31 Nor in Man-ſlaughter can a man be bailed by Statute, 3 *H.*7. cap. 1. which ſaith, that in appeal of Murther, or death of a man, (where Bail lyeth not) but *per infortunium*, or *ſe defendendo*, the Appealant may make Attorney to preſent his Appeal.

But

But Sir *Edw. Coke*, in his Treatise of *Bail and Mainprise*, p.5. and also *Dalton*, p.272. and *Lamb.* p.346,347. are of Opinion, That for Man-slaughter a man may be bailed: for, saith *Lamb. The Statute of* 1. *and* 2. Ph. *and* Mar. c. 13. *seemeth to distinguish these words*, Death of a man, *that are read in the Statute of* Westminster, 1.15. *and in this place to restrain them to Murther onely: seeing it doth admit, that for some death, or* Man-slaughter, *the slayer may be lawfully bailed*; *which also is the Common Practice*, saith he, *in that behalf*. Lamb. 346,347.

Errours. Sir John Walter, *Lord Chief Baron of the Exon. Assizes. An.* 4. Caroli, *in* Glanvil's *Case.*

Others are of Opinion, that a man is not Bailable for Man-slaughter, by the Statute 1. and 2. *Ph.* and *Mar.* cap. 13. The words of which Statute do run thus. *Any Person arrested for Man-slaughter, or Felony, being Bailable by Law (though they are bailable) shall not be bailed, unless by two Justices of the Peace be present together, at the time of the said Bailment*; *which Bailment they shall certifie*, &c. *And the said Justices, when any such Prisoner is brought before them for any Man-slaughter, before any Bailment, shall take the Examination*; *and put the same in writing, before they make the same Bailment*, &c.

Mr. Jo. Syms.

Now they say, *Man-slaughter* or *Homicide*, is the *Genus*, and comprehends all kind of killing of a man, as well Murther *per infortunium se defendendo*, &c. And if these words are to be taken according to the letter, then may they bail Murther, contrary to the prohibition of this very Statute, which doth forbid any Justices to bail any contrary to the Statute of *West.* 1 cap. 15. mentioned in this Statute of 1. and 2. *Phil.* & *Mar.* c. 13. For Man-slaughter, or Homicide,

23

is contrary to the prohibition of the Statute of *Weſt.* c. 1. which ſaith, that *None ſhall be bailed for the death of a man:* and therefore do by *Man-ſlaughter*, underſtand here ſome particular *ſpecies* of Man-ſlaughter; as Homicide *ſe defendendo*, or *per infortunium*, which indeed are no Felony. And therefore if the Rule do hold generally. That *Juſtices of Peace cannot bail ſuch perſons, of whom they are not competent Judges:* they cannot bail a man, that killeth another *per infortunium*, or *ſe defendendo*. See the Rule in *Lamb.* pag. 347, 348. And it is certain, that (by Statute *An.* 6, *Ed.* 1. *cap.* 9.) the Sheriff cannot bail them by Writ. The Juſtices of Peace have a Commiſſion to hear and determine Felonies, but *ſe defendendo*, and *per infortunium*; are not Felonies: and therefore they cannot hear and determine ſuch Homicides, or Man-ſlaughters, being not contained within their Commiſſion. *Lamb.* pag. 550. *Crompt.* Juſt. of Peace, fol. 7.

Theſe are Baylable by Weſtm. 1. 15. and 2 Mar. 13.

Baylable
1. Indicted of Larceny before Sheriffs.
2. For light Suſpicion.
3. For Petty-Larceny under twelve pence; if not guilty before of ſome Felony.
4. Nor guilty of the Receipt of Felons.
5. Nor guilty before as Acceſſary.
6. Or guilty before of ſome other Treſpaſs, for which by the Law he might have dyed: as of Houſe-burning, *&c.*
7. Or Appealed by Provers, after the Prover's death.

8.

8. If he be no common Thief, or Defamed.

Escape. To Bail a man, that is not Baylable, is a negligent Escape.

And Note, In all Cases, where a Statute speaks, That his Body shall be imprisoned at the King's pleasure; the Prisoner cannot be enlarged, or Bayled, untill the King declares His pleasure concerning him: as *M.* 24 *Ed.* 3. fol. 42. *Stamf.* fol. 77.

Approver. Note, A man cannot become an Approver before Justices of the Peace: nevertheless, it seemeth both reasonable, and serviceable; that, if a Felon will become an Approver, that is to say, will confess his Felony, and also confess others that were Co-adjutours with him in doing the same Felony (or in other Felonies) before a Justice of Peace, that Justice may take his Confession, and commit him to Goal, and may also graht out Warrants for the apprehending of others, that are so accused. *Dalt.* p. 276.

Indictments.

ONe was discharged of an Indictment, (*H.* 11. *H.* 4. fol. 41.) because one of his Indictours was utlawed of Felony, before he Indicted him. *Stamf.* fol. 88.

Utlawed.

Concealment. Justices of the Peace may enquire of the concealment of other Enquests taken before them, upon complaint made by Bill within the year after such Concealment, and may

Amerce. amerce such Concealers in discretion, by the Stat. 3. *H.* 7. 1. *Stamf.* fol. 88, 89.

Trial what. The Trial is that, which a man hath after he is Indicted, and not before. The Trial is the Issue, which is tryed upon the Indictment;

ment: and not the Indictment it ſelf. *Stamf.* fol. 90.

If a man be hurt in one County, and die thereof in another County; thoſe of the Couniy, where he dyed, may enquire of this Felony, by the Stat. of 2,& 3, *Edw.*6.cap.24. *Stamf.* fol. 90. *b.* *Hurt in one; and die in another County.*

As the word *Rapuit*,ſo the word *Proditorie*, and *Felonice*, muſt be put in every Indictment of Treaſon and Felony. *Stamford*, fol. 94. *b.* Rapuit. Proditorie. Felonice.

The Indictment ought to be certain in the Year, Day, and Place; as alſo in the Matter: as 8 *Edw.* 4. fol. 3. where one was Indicted, for that he, having taken B. upon ſuſpicion of Felony, and afterwards *eum felonice & voluntarie ad largum ire permiſit*, and did not ſhew for what Felony, *H.* 30. *H.*6. fol. 2. So if a man be Indicted for making of an hundred ſhillings of Alchimy, *ad inſtar pecuniæ Domini Regis*, and doth not alledge what money it was, *ſcil.* Groats, or Pence. *Fitz.* Indictment 10. *Indictment muſt be certain.* See *page.* *Alchimy Money.*

So if one be Indicted for a common Thief, or a common ill-doer, (*Aſſ.*22.*pl.*73.) ſuch Indictments are void. *A common Thief.*

But an Indictment, *Quod A. interfecit quendam hominem ignotum*, is good. *Aſſ.* 1. *pl.*7. M.9.6. fol.45. So if he be Indicted for ſtealing the goods of a man unknown. And the reaſon is: becauſe this Indictment is not the ſuit of him, who is owner of the goods; but the King's Suit, who is to have the goods, if none ſhall claim them. *Stamf.* fol. 95. *b.* *Of a man unknown.*

An Indictment, *Quod felonice abduxit unum equum*, is not good without ſaying, *Cepit & abduxit*; for it may be it was delivered him. So if he ſay *Furatus eſt*: and ſays not *felonice*. 18 *Edw.* 4. fol. 10. So to ſay, *Quod eam* *Words neceſſary in an Indictment.*

eam carnaliter cognovit, without the word *Rapuit*. T. 6. *Edw.* 3. fol. 26. *Stamford* 96. For it may be by the Womans consent he knew her.

Hear and Determine.

If an Indictment of Felony be presented before *A.* and *B.* Justices of the Peace, without mention of a Commission, which they have to determine Felonies; because all Justices of Peace cannot determine Felonies. *Stam.* fol. 96. *P.* 22. *Ed.* 4. fol. 12. accords.

Certiorari.

Certiorari to remove certain Indictments, and the Writ was returned in this manner, *Ad Sessionem tentam apud D. coram T. de B. & aliis Justiciariis Domini Regis, ad Pacem in eodem Com. conservand.* and not with *nec non ad diversas Felonias*, &c. according to their Commission: which was by *Certiorari* removed into the King's Bench; and there adjudged to be no Record, because the Return is vitious. *T.* 12. *H.* 7. fol. 25. *M.* 2. *R.* 3. fol. 2. accords.

Implication.

Such an Indictment is not good, which must have an Argument, or Implication, to make it good. *Stamf.* fol. 96. b. *P.* 22. *Ed.* 4. fol. 12.

All Indictments ought to contain certainty; and therefore these things be requisite:

Name of Baptism.

1. *The Name, Sir-name, and Addition of the Parties Indicted.* A man may plead Misnomer of his Name of Baptism, but not of his Sirname. *Pult. De pace*, fol. 199. *Sect.* 73. Stat. 1, *H.* 5. 5.

Mystery.

The Addition of the Degree, or Mystery, must alwayes be such, as the Party hath at the very time: but the Addition of Peace may be of such, where he was at any time before; so that then the word *Nuper* be used with it. *Lamb.* pag. 490, 491. See *Parker's* Case, fol. 35.

Nuper.

2. *The*

2. *The Year, the Day, and Place in which the Felony, or Offence was committed.* For in Felony, if a man were hurt above a year before, it is no Felony. And for Treſpaſs againſt Penal Statutes, the Offence muſt be committed within a certain time before. See the Statutes of 13 *Eliz.* cap. 5. 39. *Eliz.* 1. 21. *Jac.* 4. *Year, Day, Place.*

If the Indictment be, *That* A. *wounded* B. Decimo nono die *Maij*, anno R gis nunc quarto, *whereof* B. *languiſhed until the twentieth day of the ſame Moneth:* Quo quidem decimo nono die, *he died of the ſame ſtroke:* this is faulty; becauſe it ought to be, *whereof he died the ſame twentieth day*, &c. *Lamb.* 491. *Day he died.*

If the Offence be done in the Night, before Mid-night, the Indictment ſhall ſuppoſe it to be done in the Day before. And if it happen after Mid-night, then it muſt be ſaid to be done the day after. *Lamb.* 402. *Night-time.*

If the Preſentment be in the Negative, or in the Affirmative riſing upon a Negative; as, *That* A. *hath not ſcoured ſuch a Sewer*: or, *That by the not ſcouring thereof ſuch a way is drowned:* In theſe Caſes there needeth no Year, nor Day; becauſe it affirmeth a preſent evil. *Lamb.* 492. *Sewer.*

If the Stroke, or Poiſoning happen to be in one County; and the death in another County: the Indictment in the County where the death is ſhall be good. And likewiſe if a man become Acceſſary to a Murtherer in another County, the Indictment againſt the Acceſſary ſhall be good in that County, wherein he becommeth Acceſſary. Statute 2. and 3. *Edw.* 6. cap. 24. *Lamb.* 493. *Another County.*

If a man be robbed by the High-way in *Middlesex*, and apprehends the Thief by Hue and Cry in *Essex*, having the Goods with him; (Note this.) Now may this Thief be Indicted of Felony in *Essex*, (but not, if he had not the Goods about him) but not of Robbery by the High-way. For he is a Felon of those Goods, wheresoever he shall be found with them: But he is no Robber by the Way, save onely in that County, where he committed the Robbery. *Lamb.* fol. 494.

Note.

2. *The place must be named*; because the *Venire facias*, in many Cases, must have some Hundreds upon the Jury. Statute, 1 *R.* 3. fol. 1.

3 *The Name of the Person, against whom the Offence was done.* This Rule holdeth in most Cases. But a man may be Indicted for killing of a man unknown, or taking the Goods of a man unknown, for the King's advantage. *Lamb.* fol. 494.

Parson's Goods. Church-goods.

If the Goods of a Parson of a Church be taken, it must be *Bona Rectoris*, and not *Ecclesiæ*. And if the Goods of a Church, then *Bona Parochianorum in custodia Gardianorum*, and not *Ecclesiæ*. 37 *H.*6. fol. 30.

Executours.

If the Goods of a man be taken, and after he make his Executors, and dieth, the Indictment shall be *Bona Testatoris*. But, if they were taken after his death, it shall be *Bona Testatoris in custodia Executorum existentia*. Lamb. fol. 496.

Grave-stone.

For a Grave-stone, the Indictment shall be *Bona Ecclesiæ*.

Coat-Armour.

If a man take a Coat-Armour, which hangeth over a Tomb in a Church, the Indictment shall be *Bona Executoris*. Ibid.

Goods bailed.

If I bail, or deliver Goods to one, from whom

whom they be robbed: then it ſhall be *bona* or me in his keeping. *Lamb.* 406.

4 *The Name and Value of the thing, of which the Offence was committed, to make it appear if it be Felony*; and it muſt be of a Perſonal thing. 2. Or Petty Larceny; if it be under twelve pence. 3. Or Treſpaſs, to aggravate, or leſſen the Fault, and Fine. *Value.*

The Name and Value ought to be compriſed in the Indictment: for an Indictment of the taking of *bona & catalla*, whether it be in Treſpaſs or Felony, is not good, for the uncertainty what goods they be.

If it be for dead things, it may be *bona & catalla*: expreſſing the Name of the things in certainty: but if it be of things living, it ſhall not ſay *bona & catalla*; but *Equum, Bovem, Ovem*, &c.

5 *The manner of the Fact, and the Nature of the Offence, and the manner of Treaſon, Murther, Felony, or Treſpas.* For it may be High-Treaſon, Petty-Treaſon, Rape, Poyſoning, or Homicide juſtifiable, *&c.* *Manner.*

The manner of the Fact it ſelf, and the Nature of the Offence ought to be mentioned; for if the Indictment be, *Quod A. captum pro felonia, felonice, & voluntarie, ad largum ire permiſit*, this lacketh certainty for what Felony he was taken, and thereby is void, 8 *Edw.* 4. fol. 3. And ſo if the Indictment be, *Quod Felonice fregit Priſonam* Breac' of *apud* A. and do not ſhew for what Felony *Priſon.* he was impriſoned there, *Lamb.* 498. And therefore, in Murther, or Man-ſlaughter, it doth well to expreſs the ſtroak, whereof the Death enſued. *Dyer*, fol. 69. *Lamb.* 498.

Force.
Manu forti. And, if it be, that *A.* and *B. manu forti intraverunt in Tenementum*, &c. that alſo is ſufficient, for the like certainty. Becauſe the word *Tenementum* may as well extend to an *Houſe*, or *Cottage*; as to *Land*, *Meadow*, *Paſture*, &c. *Lamb.* p. 499.

Dagger. But, if a man be indicted for killing of *B.* with a Dagger, and the Evidence prove, it was with a Sword; the Indictment is good:

Subſtance found. Becauſe the ſubſtance of the matter is, that the Party gave him a mortal wound, whereof he died; and the Circumſtance of the manner, with what Weapon, is not material. *Coke*, lib. 9. *fol.* 67. in *Machallie's* Caſe.

An Indictment for ſelling (and making) of tanned Leather was milliked, 1 *Rich* 3. *fol.* 1. becauſe it neither contained the

Place. *Perſon.* Place, nor the Perſon, to whom the Leather was ſold; both which be material, and Traverſable. *Lamb.* 499.

If (without *Murderavit*) it be, *Quod A. occidit B. ex malitia præcogitata, & voluntaria*, it is not enough: becauſe one may kill another; ſo in Battail. And for the ſame reaſon, if it be of Man-ſlaughter, it muſt be *felonice. Lamb.* 500, 501.

If it be of Burglary, then it muſt be *Furglariter*, or *ea intentione ad Felonam ſive Murduram faciendam*: for it is not enough to ſay, *Felonice fregit domum manſio alem in nocte.* And if it be of Rape, it muſt ſay, *Felonice rapuit*: for without *Rapuit*, it ſufficeth not to ſay, *Felonice cepit Aliciam, & eam carnaliter cognovit.* 9 Ed. 4. fol. 27. *Lamb.* 501.

If it be *Felonice abduxit equum*, it is not good without ſaying *Cepit*; neither is *Cepit* good alone, without *Abduxit*: for it muſt be, *Felonice Cepit & abduxit.*

If

If an Indictment be of Petty-Larceny, it ought to have *Felonice* in it. 27 *H.*8. *fol.* 27. And so in an Indictment of *Mayhem*, it must be *Felonice mahemavit*: and yet it is not Felony. *Lamb.* 502.

In an Indictment of Trespass, or Felony, the words *Contra pacem* ought to be used. *Lamb.* 502.

If the Indictment be of forcible Entry, then the words *Vi & armis* be needless; because they are necessarily implyed in the word *Force*. *Lamb.* 582. *Force!*

If the Indictment be founded upon a Statute, it ought to say, *Contra formam Statuti in ejusmodi casu provisi ac edit:* or, where many Statutes do concern one Offence, *Contra formam diversorum Statutorum*, without special naming of any. And then the best shall be taken for the King. *Lamb.* pag. 502.

But an Indictment of Riot, without saying *Contra formam Statut*, &c. is not good: because it is no Riot, but by that Statute. *Lamb.* 502, 503. *Riot.*

A man was indicted upon the Statute 1 *El.* 1. & 13 *El.* 2. for aiding another; knowing him to be a principal maintainer of the See of *Rome*, *contra formam Statutorum prædictorum*; but, for want of certain material words, *viz. Upon purpose, and to the intent, to set forth, and extoll the Authority*, &c. the Indictment was held insufficient. *Dyer* 363. *Lamb.* p. 503. for a man may do it by Argument, to shew his Learning in such a degree. *See of Rome.*

Justices of the Peace may reject Indictments, that find any matter of Record; as Utlary, &c. unless it be shewed unto the Jurours *Sub pede sigilli*, for Jurours are to finde matters in Fact onely, and not matters of Record. *Lamb.* pag. 504. *Record.* *Matter of fact.*

Additions. Information.

Additions (by Stat. 1 *H.* 5. *cap.* 5.) ſeem to have no place in Informations brought againſt the breaker of a penal Statute: Becauſe it is not mentioned in it; and upon that reaſon the Court (13 *H.*7. fol. 21.) did hold it clear, that, if *Reſcous* be returned by the Sheriff, againſt certain perſons, without their additions, yet they may well be utlawed thereupon. *Lamb.* 510.

Reſcous.

Indictments of Acceſſaries.

Manner of Felony.

IF one be indicted as Acceſſary, for the receipt of a Felon, in the Indictment there muſt be mention made of the manner of the Felony: and that he, knowing him to have committed ſuch a Felony, he felonioufly received him. *T.* 7. *H.6. fol.*42. But,

Same County

it is otherwiſe, if he receive one attainted of Felony in the ſame County, where the Felony was committed; in this caſe he needs not to make mention of the manner of the Felony. *P.*8. *Edw.*4. fol.3.

Received the Felon.

Alſo it is no good Indictment to ſay, that he felonioufly received the goods, without ſaying he received the *Felon* alſo. *Aſſ.* 27. pl. 69. *Stamf.* fol. 96. *b.*

Although Indictments may be void in reſpect of charging any with Felony, *ut ſupra*: yet divers of them may ſtand, and ſerve, as

Treſpaſs.

Indictments of Treſpaſs, to put the Party to his Fine. 18 *Edw.*4. 10. 2 *H.*7,7. 6 *H.*7.4. Namely ſuch Indictments, which want no certainty; but onely want words to make it Felony. And in caſe Indictments do want

Venire facias.

certainty, the Juſtices may award a *Venire facias* againſt the Indicters, to amend that which wanteth. *Stamf.* fol.97.

If

If the Court upon the Arraignment of a Priſoner ſhall diſcharge him of the Indictment, paying his Fees, becauſe they thought the Indictment inſufficient: yet, if after another day, or time, they change their Opinion, they may command the Gaoler to keep him in Priſon, and to ſtand to their deliverance, notwithſtanding his former Indictment (if Judgment be not entred) and that by the King's Prerogative; being Party to the Suit. *Stamf.* fol. 97. *Change of opinion.*

In an Indictment a man may become an Approver; but not in an Appeal. *Stamf.* 181, 182. *Approver.*

1 The Acceſſary cannot be convicted, before the Principal be attainted; *viz.* by Verdict, or Utlawry. Lord *Sanchet's* Caſe. *Coke*, lib. 9. fol. 118, 119.

2 The Indictment in *Middleſex* ſhall recite *de facto*, that the Principal committed the Murther in *London*.

3 If the Offence be committed in the ſame County, there needs not fifteen dayes for the return of the *Venire facias*. But, if the Indictment be taken in another County, then where the Offence is committed, and removed into the King's Bench: in that Caſe there muſt be fifteen dayes between the *Teſte* and Return of the *Venire facias*. Lord *Sanchet's* Caſe. *Coke*, lib. 9. fol. 118. *Fifteen Dayes.*

4 If a man be indicted as Acceſſary to two, and be found Acceſſary but to one; yet the Verdict is good. *Ibid.* fol. 119.

5 If the Principal be Attainted, though erroneouſly, either by errour in the Proceſs, or becauſe the Principal is out of the Realm, and ſo Utlawed: or for that he was in Priſon at the time of the Utlawry: yet the Acceſſary ſhall be Attainted, becauſe the Prin- *Erroneouſly attainted.*

cipal ſhall ſtand, until it be reverſed. *Coke, lib. 9* fol. 119. Lord *Sanchez*'s Caſe.

Bars in Indictments.

Note, Alien Plaintiff.

Challenge. Alien.

See pag. 58.

All Felonies.

Attainder.

Felony ſeveral.

Eſcapes.

Peace broken.

SPiroſa's Caſe. If an Alien, born, do not pray *medietatem linguæ*, before the *Venire facias* awarded, it will be too late afterwards: *Quia non conſtat Curiæ*, that he is an Alien. *Dyer*, 357. *pl.* 45. But, in caſe of Indictment, an Alien ſhall not have his Challenge *de medietate linguæ*. *Pulton*, De pace Regis, *fol.* 193. *ſect.* 3. And the Caſe of *Dyer* is upon an Action brought by the Party, and not upon an Indictment.

1 The King's Pardon with a *non obſtante*. *Stamf.* fol. 99. 101.

If a man be Attainted of Felony, and the King pardon him all Felonies: it is not good; becauſe the Charter pardons not the Attainder. *T.* 9. *Edw.* 4. fol. 28. *Stamf.* 102.

If the King do pardon three of all Felonies, by them, or any of them, committed; it is not good; becauſe the Felony is ſeveral.

If the King grants to one, to be quit of Eſcapes of Felons out of his Priſon: it will not diſcharge him of Voluntary Eſcapes, but onely of Negligent Eſcapes; becauſe the King cannot licence men to commit Felony. *Stamf.* fol. 202. *b.*

If a man break the King's Peace, after he hath a Pardon: the Pardon ſhall be diſallowed. *Stamf.* fol. 104.

The Pardon muſt agree with the Judgment in the Name, Sirname, and Addition of the Party. *Ibid.*

2 *Auter fois acquit* of the ſame Felony, and then vouche h the Record: for he ſhall not be compelled to have the Record in Poign; becauſe his Plea is not dilatory, but in Bar, and a man ſhall not put his Life twice in jeopardie for one Offence. *Stamf.* fol. 105. *Record.*

If a man be indicted as Principal, and acquitted; he may be indicted again as Acceſſary after: but, if he be indicted as Acceſſary before, he cannot be indicted after as Principal; becauſe they are in a manner but one Offence. *Stamf.* fol. 105. *Principal. Acceſſary.*

If a man be indicted, and arraigned, for the death of *I*, at *Stile*, which *I*, at *Stile* was known alſo by the name of *I*, *at Noke*: the the Defendant may plead, and aver, that *I*, at *Stile*, and *I* at *Noke*, are one, and the ſame Perſon, and ſhall be diſcharged thereupon. *Aſſ.* 26. *pl.* 15. *Two Names.*

So, if a man be indicted in one County, and acquitted; and is afterwards indicted, and arraigned of the ſame in another County; he may plead the firſt Acquittal in Bar. *Stamf.* fol. 105. *b.* *Another County.*

Quære, If the ſame Law be in Robbery: For a man may rob another divers times, and they are ſeveral Robberies: ſo that the Acquital of one will not ſerve the other; as it will in Murther, where a man can be killed but once. *Stamf.* fol. 106. *Several Offences.*

Note, That *Auterfois acquit* is no Plea: if there be not ſufficient matter of Felony in the Indictment; becauſe his life never came into queſtion. *Stamf.* fol. 106. *Sufficient matter.*

If a man, attainted of Felony, have alſo committed Treaſon: in this Caſe he ſhall anſwer to the Treaſon for the King's advantage; becauſe the King ſhall have the benefit of his Lands, M. 1. *H.* 6. fol. 5. but, *Felony. Treaſon.*

if the Treason were committed after his Attainder of Felony, it's otherwise; for then the Title, which was invested in the Lord before the King's Title, cannot be revested by matter accrewing *ex post facto*. Stam. *fol.* 107.

Revested.

If the Principal have his Clergy, it shall not serve for the Accessary. *Crompt.* Justice, *fol.*27. 13 *Edw.*4. fol.3. *By Coron.* 184. 185. 3 *H.* 7. fol.12.

Clergie.

Blind. Maimed.

HE, that is blind, or maymed, or such person, that by no dispensation may be a Priest, cannot have Clergie. The same Law is of a Woman. But see Stat. 21 *Jac. cap.* 6. Nor he, who hath committed Sacrilege. *Stamf.* fol.123. *b.* If he have not Tonsure, the Judg may deny him Clergie. *Stam.* fol.124. *Quære.*

Sacriledge. Tonsure.

He, that might have Clergie, may by the Common Law have had it often times, before the Stat. 4 *H.*7. *cap.*13.

Kill a man, se defendendo: Per infortunium.

He, that kills a man by Misadventure, or *se defendendo*, shall not have Clergie, nor for Petty-Larceny; because in these Cases he shall not have Judgment of Life and Member. *Stamf.* fol.124.

Confesseth Felony.

He, which confesseth Felony, shall not have it by the Common Law: but by Stat. of *Articuli Cleri* he shall. *Stamf.* fol.124.

Confesseth upon Record.

But *Coke*, *lib.* 11. *fol.* 30. in *Alexander Pulter's* Case, saith, That *e that confesseth the Felony upon Record, shall not have his Clergie; because he cannot make his Purgation against his own Confession.*

Heresie. Jew. Sacriledge. Turk. Infidel.

No man, convicted of Heresie, a *Saracen*, *Jew*, or Infidel, not for Sacriledge, neither

Infidia-

Insidiatores viarum, and *Depopulatores agrorum*, shall have Clergie by the Common Law. *Coke* (lib. 11. *fol.* 30.) in *Alexander Pulter's* Case. But the Stat. of 1 *Ed.* 6. 12. saith, that, in all other Cases than are excepted in the Statute, they may; unless they are barred by any later Statute.

If the Prisoner be indicted by the Name of *Clerk*, *Priest*, or *Monk*: the Court must grant him his Clergie; though he prayeth it not. *Stamf.* fol. 101. *b.* See *G. Parke.'s* Case. *Clerk.*

A Clerk may have Clergie oftentimes, notwithstanding the Statute of 4 *H.* 7. 13. *Stamf.* fol. 135. *b.* neither shall he be burned in the hand. *Ibid.* *Clerk burned*

But afterwards, (fol. 135, 136.) he saith, That, *In all such Cases, in which a man is outed of his Clergie by* Stat. *of* 1 Edw. 6. *cap.* 12. *A man within Orders is also outed, as well as any Lay-man; because the* Statute *is general: and also he is outed of Clergie by such* Statutes; *in which, Clergie is taken away generally, and made since the* Statutes of 1 *Edw.* 6. 12. *Stamf.* fol. 136. And according to this last Opinion you shall finde is *George Parker's* Case: who was arraigned, as Accessary before, for a Murther committed upon a Childe of one *Hellen Millesent*, (*M.* 2. & 3 *Eliz.*) at *Cambridge* (being a Bastard) where it is said, that albeit the said *Parker* were a Clerk, *tamen suspensus fuit pro procuratione prædicta*, Dyer *fol.* 186. *pl.* 3. but he was indicted by the Name of *George Parker*, Yeoman. *G. Parker's Case.*

In case an Accessary to Robbery in a Mansion-house (and divers being in the same House put in fear) be indicted, and the word Maliciously be omitted in the Indictment, the Accessary shall have his Clergie. *Dyer*, fol. 183. *pl.* 59. *Maliciously omitted.*

Tryal. Record. Transcript.

Note, The Tryal is by the Record it ſelf; or by Statute of 34, and 35, *H.*8. *cap.*14. by Tranſcript from the Clerk of the Crown of the King's Bench. *Stamf.* fol. 136. *a.*

Clergie barred by Statutes.

Clergie barred

1 Such, as have had it before. *Stat.* 4 H. 7. cap. 13.
2 Souldiers, running from their Captains. 7 *H.* 7. 1, 3. 3 *H.* 8. 5.
3 Such, as challenge twenty peremptorily. 25 *H.* 8. 3. 1 *Ed.*6.12.
4 Such, as ſtand mute, and will not anſwer. 25 *H.* 8. 3.

By Statute 1 *Ed.* 6. 12.

Clergie barred

5 Murther, and poyſoning.
6 Robbery in, or near any High-way.
7 Breaking Houſe by day, or night; any perſon in it, and put in fear.
8 Stealing of Horſes.
9 Robbing of Church, or Chappel.

If any of theſe be found guilty by a Jury, or ſhall confeſs the ſame, or ſhall ſtand mute, or will not plead to the Indictment; ſuch ſhall not have Clergie. But if he be Utlawed, he may have his Clergie in all thoſe Caſes excepted by 1 *Ed.*6.12.

Utlawed.

Clergie barred by *Statute.*

10 Robbers, and Burglars, in one County, being taken with the goods, and arraigned in another County. *Statute* 5 *Ed.* 6. 10.
11 Such as ſhall rob Booths, or Tents, or any part of a man's Houſe, although he be aſleep: by *Stat.* 5 and 6 *Ed.* 6. cap.9.39. *Eliz.*4.
12 Cut-purſes. Stat.8 *Eliz.* 4.
13 Burglars. Stat. 18 *Eliz.* 6.

14

Clergie barred by *Statute.*

14 Rape. Stat. 18 *Eliz.* 6.
15 Abuſing a Woman-childe, **under** the age of ten years. Stat. 18 *Eliz.* 6.
Note, ſuch as are allowed Clergie, may be kept in priſon according to the Juſtice's Diſcretion, for any time under one year. 18 *Eliz.* 6. *Priſon.*
16 Receivers of Jeſuites. Stat. 27 *Eliz.* 2.
17 Stealing any Goods out of any Houſe by day, to the value of five ſhillings. 39 *Eliz.* 15.
18 Taking Women againſt their wills. 39 *Eliz.* 9.
19 Wandring Souldiers. 39 *Eliz.* 27.
20 Incorrigible Rogues. 1 *Jac.* 7.
21 Stabbing. 1 *Jac.* 8.
22 Witch-craft. 1 *Jac.* 12.
23 Acknowledging Fines in others Name. 21 *Jac.* 26.
24 Buggery. 25 *H.* 8, 6. 5 *Eliz.* 17.
25 Petty-Treaſon. 12 *H.* 7. 7.
26 Houſe-burners. 5 *Mar.* 4.
27 Burning Barns with Corn. 51 *Mar.* 4.
28 Robbing Houſe by day. 39 *Eliz.* 14.

Acceſſaries before.

For

Horſe-ſtealers both before and after. 31 *Eliz.* 12.
Petty-Treaſon. 3 *Mar.* 4.
Murther. 3 *Mar.* 4. *Geo. Parker's* Caſe, 33, 34.
Robbing of Houſes. 3 *Mar.* 4.
Robbing in High-ways. 3 *Mar.* 4.
Burning of Houſes. 3 *Mar.* 4.
Burning Barns with Corn. 3 *Mar.* 4.

Confeſſion

Confeſſion of the Crime.

THough a man confeſſeth the Crime, yet if the Confeſſion doth appear unto the Court to proceed of fear, threatning, or impriſonment, that he did it: he ought not to record his Confeſſion: but cauſe him to plead *Not guilty*. (*Stamf.* fol. 142.) but not, if he confeſs it upon Record; becauſe he cannot make his Purgation.

Approver.

AFter Confeſſion of the Crime, the Felon may appeal, or accuſe others, who were Co-adjutours with him. And in *Latine* ſuch an one is called *Probator*; becauſe he muſt prove the Appeal: and the Proof is by Battail, or by the Country, at the choice of the Appealer. *Stamf.* fol. 142.

Quære, *Of what things he muſt approve*

Things, whereof to Approve.

He muſt approve of ſuch Treaſon, or Felony, which he hath committed with others: for if he do of any other things; it is void. *Stamf.* fol. 143.

So, if he will appeal one; for that he procured him to commit ſuch a Felony, for that another received him after that he had committed ſuch a Felony. *M.* 10. *Ed.* 4. fol. 15. *Aſſ.* 40. pl. 39. For theſe Offences he himſelf cannot do. For he cannot rob himſelf; nor be acceſſary to himſelf. *Stamf.* fol. 143.

Priſoner Approves.

The Priſoner, upon his Indictment of Felony, may acknowledg the Indictment, and pray a Coroner, and ſo to approve. And ſo he may, if he be not indicted, but ſtands at the

the Bar, as one delivered by Proclamation. *Stamf.* fol. 143.

If a man be in priſon for Suſpicion of Felony, he may confeſs the Felony before a Coroner, and become an Approver.

But it is otherwiſe, if he be at large; or in priſon for any other cauſe, then Felony, or Treaſon. *Stamf.* fol. 143. *b.* *At large.*

After a man hath pleaded, he cannot have a Coroner aſſigned him. 21 *Edw.*3.13. *Stamf.* 149. *Crompt.* Juſtice, *fol.* 66. *b.*

Quære. *Before wt at Judges he may approve.* *Judges, before whom to approve.*

Before ſuch, as have power to aſſign him a Coroner; Juſtices of the King's Bench in Eyr, or Gaol-delivery: but Juſtices of the Peace cannot take it. *Stamf.* fol. 143, 144.

Quære. *How the Approver muſt demean himſelf.* *Approver's demeanour.*

Before his Approvement he muſt confeſs the Felony, before he plead. 2. If he contradict himſelf, he is to be hanged. 3. Then he muſt be ſworn. 4. He ſhall have but three dayes allowed him by Stat. of 5 *Edw.*2. *cap.*34. *rep.* 4. When a Coroner is aſſigned unto him, he is to be let out of Priſon under keeping. 5. When he hath made his Appeal before the Coroner, and the Coroner hath entred the ſame into his Roll: then he ſhall come again before the Juſtices, and repeat his Appeal before them, (for his Appeal ſhall not be read unto him) and if he miſs a word in the rehearſal thereof, other than the Coroner hath recorded, he ſhall be hanged: as, if in his rehearſal he ſay, he ſtole a *Black* Horſe where it was a *red.* 145.

Pain

Pain fort, & dure.

Pain fort & dure.

NOne ſhall be adjudged to this Pain, if there be not evidence, or publick matter, to convince him of the Crime, whereof he is arraigned: or otherwiſe, if he be not a notorious Felon; or of ill fame. *Stamf.* fol. 150. *Stat.* 3. *Edw.* 1. 12.

Who ſhall be adjudged thereto.

When adjudged.

This Judgment ſhall be given him, onely, when he is arraigned at the Suit of the King, and not at the Suit of the Party: for then he ſhall be hanged; *ſcil.* upon an Appeal, *Stamf.* fol. 150.

Nor culpable, or not guilty.

Plea in Bar.

IN Caſe a man arraigned plead any Plea in Bar; as *Autrefois acquit* of the ſame Felony, *&c.* he muſt plead his Plea; and pray allowance thereof, and further, as for the Felony, Not guilty. *Stamf.* fol. 151. *b.*

Not guilty.

Tales.

Tales.

When granted.

Tales is granted, when ſufficient of the principal Pannel do not appear to make a Jury; or are put by, for being challenged. In this Caſe, the Plaintiff ſhall have a *Tales*, and divers *Tales*, one after another. For firſt, when he craves a *Tales*, it ought to be under the number of the principal Pannel; except in an Appeal; for there the Plaintiff may crave more; becauſe of the peremptory Challenge: as *M.* 24. *H.* 7. *fol.* 7. and the ſecond number ſhall be under the number of the firſt; as

M.

M. 14. *H.* 7. *fol.* 1. *T.* 20. *H.* 6. *fol.* 40.

If all the Poles are challenged, and drawn: then no *Tales* ſhall be granted; but a new *Venire facias*. And if one Enqueſt be charged, and one of them die before the Verdict: in this Caſe a *Tales* ſhall be awarded, and not a new *Venire facias*, The ſame Law is, if a Jurour die, before he be ſworn, and ſo is returned by the Sheriff: which ſhall not abate the Pannel; but be a cauſe to grant a *Tales*. *M.* 20. *Edw.* 4. 11. *Stamf.* fol. 155. *Poles.* *Jurour die.*

Juſtices of Gaol-delivery may take a Pannel of the Sheriff, without making any Precept unto him: becauſe, before their coming, they give a general command to the Sheriff, to cauſe the County to come before them. But it is otherwiſe of Juſtices of Peace: for they were adviſed by the Juſtices of both Benches, (*M.* 22. *Edw.* 4. 44.) that they ſhould not proceed in the deliverance of a Felon the ſame day, that they award the *Venire facias* againſt the Jury; but another day. *Stamf.* fol. 155, 156. *Venire facias*

Juſtices of *Oyer* and *Terminer* cannot enquire and determine it the ſame day, no more then Juſtices of the Peace. *Brunſden's* Caſe. *An.* 11. *Caroli* II. in *Hill's Reports*. *Trial in one day.*

Challenge in *Felony*, and *Treaſon*.

THere be two ſorts of Challenge:

1 Peremptory; the Party arraigned may challenge twenty without ſhewing cauſe, by the Stat. 22 of *H.* 8. 14. *See pag.* 50. *&* 137. *Challenge: Peremptory;*

2 Challenge *pro cauſa:* as, 1. No Indictour ſhall be upon the ſame Jury, Stat. 25 *Ed.* 3. cap. *Pro cauſa.*

cap. 3. *De proditionibus.* Secondly, Challenge to the Arrayer; where the *Alien* is indicted, and the Jury be not *de medietate linguæ*, Stat. 28 *Edw.* 3. *cap.* 13. but it is no matter of what Nation the Aliens be. But an *Alien Plaintiff cannot have this Challenge:* (but the *Defendant* onely) becauſe the Plaintiff may ſurmiſe before the *Venire facias* awarded; that he is an *Alien*, and may pray Proceſs according to the Stat. *Stamf.* fol. 158, 159. M. 21. *H.* 7. *fol.* 32.

Alien Plaintiff

Egyptians ſhall not be tryed *per medietatem linguæ*, but are barred by Stat. of 22 *H.* 8. *cap.* 10. 2 *Mar. cap.* 4. Whereas the words of the fore-ſaid Stat. of 28 *Edw.* 3. *cap.* 13. be, That *in all manner of Enqueſts, and Proof, which are to be taken*, &c. thoſe Words are not to be conſtrued of an Indictment; for that may be taken all of Denizons, though it do concern an Alien: but the Stat. is to be intended of ſuch Enqueſts, where the party is admitted to his Challenge; and ſo he is not, upon an Indictment.

Egyptians barred Challenge.

Alien's Challenge.

For, the Party which is an Alien, may upon his Arraignment have the ſaid Challenge in the Array, to ſhew, that in the Pannel there is not *medietas linguæ*; according to the Statute of 28 *Edw.* 3. 13. (confirmed by Statute of 8 *H.* 6. *cap.* 29. For he hath no other remedy, being Defendant: but, if he be Plaintiff, then, before the *Venire facias* awarded, he muſt ſuggeſt; that he is an Alien, and pray proceſs to ſummon the Jury *de medietate linguæ*, and ſuggeſt in what parts beyond the Sea he liveth, that ſo he may have men of the ſame Country of his Enqueſt. And if he will not, *viz.* the Plaintiff) ſignifie that, before the *Venire facias* awarded, he ſhall not ſuggeſt it after, nor challenge the Array, or Poles, for that cauſe;

In civil Cauſes.

cauſe; ſeeing it was his folly, he took not the benefit of the Statute in due time. *Pult. De Pace*, fol. 193. ſect. 3.

Both Parties Aliens.

If both the Parties be Aliens, the Enqueſt ſhall be all *Engliſh*; and not *de medietate linguæ*, 21 *H.6.* fol.4.

Alien indicted of Treaſon tryed by Common Law.

If an Alien be indicted of High-Treaſon, he ſhall not have his Tryal *de medietate linguæ*: but the Tryal ſhall be according to the due courſe of the Common-Laws of this Realm. And, if a *Scot* be indicted of Felony, he ſhall not have his *medietatem linguæ*: for he was never accounted an Alien, but a Subject. *Pulton, De Pace*, fol.193.*b.* ſect.3. *Dyer* 144. *Dyer* 304.

A Scot hath no medietas linguæ granted.

Sub ect. Fourty ſhillings per an.

If a Jurour have not fourty ſhillings *per annum*, by Stat.2.*H.*5. *cap.*3. and that fourty ſhillings in the County, where the Iſſue is to be tryed. *qu.* 9 *H.*7.*fol.*1. except in Towns Corporate; who are excepted by Statute 23 *H.* 8.13. *Stamf.* fol.160,161.

King's Challenge.

The King may challenge for Cauſe. M.44. *Edw.*3.38. the King challenged the Array in Conſpiracy, becauſe the Sheriff purchaſed a Mannour, parcel of the Premiſſes comprehended in the Indictment. Secondly, If the Sheriff be Cozen to the Party. 47 *H.* 3. *Stamf.* 1620.

Cozen.

Verdict.

General Verdict not neceſſary.

UPon the Iſſue of *Not Guilty*, it is not always requiſite to have a *General Verdict*; for, if the Fact be doubtful to the Jury, be it Felony, or not, they may give a *Special Verdict*. *Stamf.* fol.64.

Special.

Se defendendo.

As a Jury may give a *Special Verdict* touching a man, that killeth another in his own defence, ſo may they alſo, where he,

that

Per infortunium. that is arraigned, killed another by Misfortune; or where he, that committed the Homicide, was not of perfect memory; or an Infant without diſcretion; or that the thing, *Non ſana memoria.* that was ſtolen, was not worth above ten *Under Value* pence; or he, which is indicted, and arraigned for murther, did kill the man by Chance-medly, or in his own defence, and *Chance-medley.* not of malice prepenſed. *Pulton*, De pace, *fol.* 196. ſect. 2.

And, as a Jury may give a *Special Verdict* to attenuate an Offence, and make it leſſe penal; ſo they may by a *Special Verdict* aggravate the Offence more then the Indictment did: as (*Fit. Coron.* 115.) a man was *Special Verdict, to aggravate the Offence.* indicted, and arraigned, for the ſtealing of a linnen cloath to the value of two ſhillings, and the Jury found, that he did rob the owner of the linnen cloath to the value of ten ſhillings; and further, that he took it from the perſon of a man: whereupon he was adjudged to be hanged. *Pult.* De pace, fol. 196. 197. *ſect.* 13.

Non culp. A man pleaded *Non culp.* upon his Arraignment of Felony, and challenged 31 and upon a *Tales* returned, the Felon would not plead, wherefore the Jury was charged upon him, and he was found guilty, and hanged; (15 *Edw.* 4. 33.) becauſe he pleaded not guilty before. *Crompt.* Juſtice of Peace, *fol.* 19. *b.* So it ſeems, if he plead upon his Arraignment at the firſt, it ſufficeth.

Mute. If a man, arraigned of Felony, plead *Not Guilty*, and after he became Mute, *qu. per acta de diem*, he ſhall not be tryed. *Fitz.* (*Droit*, *pl.* 57. 11 *H.* 3.) adjudged accordingly, and *Crompton*, Juſtice of Peace, *fol.* 19. *b.*

Cor-

Conſpiracy.

HE, that is chatged in Conſpiracy, muſt be charged, That he did it *Falſely*, and *Maliciouſly, without any good or lawful ground.* Stamf. fol. 172. Falſly *and* Malicioufly.

Conſpiracy cannot be maintained againſt one perſon alone. (*Stamf. fol.* 173.) nor againſt two, who preſent but one perſon; as a man and his Wife. *Stamf.* fol. 174. *Conſpiracy not charged againſt one.*

Note, That when one is Convicted of Conſpiracie at the ſuit of the Party, the Judgment is no other, but that the Plaintiff ſhall recover his Dammages; *Et quod defendents capiantur*: But when it is at the ſuit of the King, it is more grievous; *viz.* the Judgment is, that, *He ſhall loſe free Law, and ſhall not henceforth be put in Juries, or Aſſizes, nor ſhall be no Witneſs*: and if he have to do in the King's Court, he ſhall make Attorney; his Lands, Goods, and Chattels ſhall be ſeiſed into the King's hands, and his Writings, and Trees raſed, and his Body to Priſon. *Stamf.* fol. 175. *Judgment in Conſpiracy.*

Judgment in Treaſon.

THat, *He be carried back to the place whence he came, and from thence to be drawn upon an Hurdle unto the place of Execution; and there to be hanged by the neck, and cut down alive; and his bowels, and privy members to be cut off his Body, and burned before his face, and his Head to be cut off, and his Body to be divided into four parts, and diſpoſed of at the King's pleaſure.* But for counterfeiting the King's Coyn, onely *To be drawn, and hanged,* Judgment in Treaſon. *For counterfeitting the King's Coyn.*

Petty

Petty-Treaſon.

Petty-Treaſon. Woman.

THe Judgment is to be *drawn*, and *hanged*; But a Woman muſt be *burnt*. *Stamf.* fol. 182. *b.*

Felony.

Felony.

FOr Felony the Judgment is, That He *ſhall be hanged by the Neck*: Suſpend. per collum.

CONSPIRACY; Ut Supra.

Acceſſary.

No Acceſſary in Petty-Larceny.

NO Acceſſary unto Petty-Larceny; as Sir *Humphry Davenport*, Chief Baron held at *Exon*-Aſſizes, 10. of *March*, *An. 9. Caroli.*

But M. *Riſdon* ſaith, that one may be *Acceſſary-after* to Petty-Larceny.

Forfeitures.

Goods forfeited by flying recorded in the Coroner's Roll.

IF it be found in the Coroner's Roll; that the Party indicted before him fled: he ſhall forfeit his Goods; albeit he be afterwards acquitted of the ſame felony. *Stamf.* fol. 183. *b.*

Coroner. Acceſſary.

A Coroner cannot enquire of Acceſſaries after the Murther. 4 *H.* 7. fol. 18. becauſe he, that was ſlain, came not to his end by their means. *Stamf.* fol. 183, 184.

Retraxit.

If a Jury acquit a man, and finde that he withdrew

withdrew himſelf for the Felony, he ſhall forfeit his goods. *Stamf.* fol. 184.

If one be indicted but for Petty-Larceny, and acquitted; yet, if it be found, that he withdrew himſelf, his goods are forfeited, and ſo ſhall he forfeit his goods, although he have a Pardon. *Stamf.* fol. 184. becauſe the Pardon doth rather continue the preſumption againſt him, then take it away. *Stamf.* fol. 184. *Petty-Larceny.* *Pardon.*

If a man be indicted, and comes not in before the Exigent, he forfeits his goods, although he be afterwards acquitted; becauſe it doth appear of Record, that he withdrew himſelf: except he can prove that he was in Priſon, or beyond the Seas, and could not come. But, if the King do pardon him before the Exigent awarded; his goods are then ſaved. *Stamf.* fol. 184. *Exigent.* *Acquired.* *Appear of Record.* *In Priſon.* *Pardon.*

Of Lands and Goods.

TEnant in tail for Felony doth forfeit his Lands for life onely, and ſo alſo for Petty-Treaſon: alſo he forfeits a right to Lands, and all his Obligations, and Debts, and Debts upon Contracts, and Debts upon Accompt. *Stamf.* fol. 187, 188. *Tenant in tail*

Alſo he forfeits another man's goods in ſome Caſes: as, if he have another man's money in his cuſtody to keep; as money out of a bag, or Corn out of a Sack: becauſe the owner cannot prove it to be his money, or his Corn. But, if it be a thing known, it is otherwiſe. *Stamf.* fol. 108. *Another man's goods.* *A thing known.*

But it is otherwiſe of Executors, becauſe they are *bona Teſtatoris in cuſtodia eorum.* Stamf. *fol.* 188. *b.* *Executors.*

A man,

Escape.
Stam before Arrest.

A man arrested of Felony, escapes, and is slain in pursuit, he forfeits his goods: The same Law, if he be slain before he be arrested. *Stamf. fol.* 188, 189.

For misprision of Treason, his goods, and chattels for ever, and the profits of his lands, during his life.

For misprision of Felony, to be fined only.

For High-Treason, all his goods, and Chattels, Lands entailed, his Wife loseth her Dowre, and his Blood corrupt.

In *Præmunire*, his goods and chattels, his Lands in Fee for ever, his Lands entailed for life, and imprisonment for life. *Dalt.* 203.

Felo de se, his goods, and chattels, and debts by specialty; but not his lands; not his blood corrupt. *Dalt.* 208.

For Petty-Larceny, his goods, and chattels. *Dalt.* 230.

For killing one by misadventure, his goods. *Pulton.* De pace. *fol.* 216.

Se defendendo, his goods. *Pulton*, De pace, *fol.* 216.

He, that standeth Mute, forfeits his goods. *Pulton*, De pace, *fol*, 216.

Annum, Diem, & Vastum.

THE Year, Day, and Waste is given by *Statute. De prærogativa Regis*, An. 17. *Edw.* 2. 16. *Stamf.* fol. 190.

The words of the Statute are; *Si habeat liberum tenementum, capietur in manu Domini Regis statim.* This word *Statim* ought to be understood *Presently*, after Office found, and not before. *P.* 49. *Edw.* 3. *fol.* 11.

Office found.

If an Office be found twenty years after the Attainder; yet from that time, until a year after, shall be said *Mesne tempus*; because

cauſe the Lord is to have the Land without profit, that is to ſay, *waſted*. For the Lord cannot have the Eſcheat, before the King hath had the Year, Day, and Waſte, or be ſatisfied by way of Compoſition. Neither can he enter into his Eſcheat, until he hath ſued a Writ to have it out of the King's hand; for, after a Writ is iſſued to finde an Office of the Land of him that is attainted, another Writ ſhall iſſue (as in the Regiſter) to enquire, if the King hath had the Year, Day, and Waſte; and, that being found, the Lord ſhall have the Land out of the King's hand, and not before.

Land waſted. *Eſcheat.* *Compoſition.* *Writ to enquire.*

For, notwithſtanding the Office, it may be the King was interrupted by ſome Perſon, or Caſualty: but the King may grant it, after he is entituled to it by Office. *Stamf.* fol. 191.

King interrupted.

Alſo the King ſhall have the ground ſowed. *Stamf.* fol. 191.

Ground ſowen.

The time, to which the Forfeiture ſhall relate.

FOr Lands; that ſhall have relation to the time of the Felony committed.

And, after that time, he is reſtrained from alienating of them. 30 *H.* 6. *fol.* 5. *Stamf.* fol. 192.

Alienation.

2 But for Goods, if a man commit Felony, and is arraigned; and, between the Felony and the Attainder, he gives his Goods. This Gift is good; Becauſe for Goods, and Chattels, it ſhall have relation, not from the time of the Felony committed; but from the time of the Forfeiture of them, and therefore, if a man forfeits his Goods upon;

Gives his Goods.

Furam facit.

Fugam fecit. upon *Fugam fecit*, preſented before a Coroner, he forfeits not the Goods he had at the committing of the Felony; but onely the Goods he had, at the time of the Preſentment of *Fugam fecit*. So upon Utlary he forfeits the Goods, which he had at the time of the Exigent awarded, and not before. Or if he be convicted, he forfeits the Goods, he had at the time of the Verdicts given. *Stamf.* fol. 192.

At the time of the preſentment.
Exigent.
Convict.
Verdict.

When Felons Goods ſhall be ſeiſed.

Coroner.
Goods.
Enquire.
Praiſe the Goods.
Deliver them to the Town.
Fugam fecit

WHen any one is found Guilty before the Coroner; the Coroner ſhall preſently go to his Houſe, and enquire of his Chattels, and Corn, and of his Land and Corn growing, and prayſe them, and deliver them to the Town to keep, and anſwer before the Juſtices.

And, when *Fugam fecit* is found before the Coroner, the Sheriff ſhall ſeiſe the Lands preſently into the King's hands by word, without any Enqueſt. And alſo all his Goods, and praiſe them by good Enqueſt, and cauſe the price to be enrolled in the Coroner's Roll, and deliver them to the Town, to anſwer the King for them. And (*Mich. Edw.* 3. fol. 24.) it is ſaid, That the King's Officer cannot ſeiſe a Felon's Goods before Attainder; and, if he finde Surety, he ſhall leave them in his Cuſtody. But, whether he findes Surety, or not, he is not to carry them away with him; but muſt leave them in the Cuſtody of his Neighbours. *Stamf.* fol. 192. *b.*

Sheriff to ſeiſe the Land, and Goods.
Enqueſt enrolled.
Town.
Attainder.
Surety.
Cuſtody.

The Statute of 1 *Rich.* 3. *cap.* 3. extends but

but onely to those, who are imprisoned, or arrested: for those, that are at large, and indicted of Felony, the Sheriff may seise their Goods at the second *Capias*, by *Stat.* 25 *Edw.* 3. cap. 14. *Stamf.* fol. 193. *b.* *Statute expounded.*

The custody of the Goods of those, who are convicted of Felony, or are fugitive, belongs to the Town, where the Felon inhabited; and, though the Goods were not delivered to the Town, but remain in the custody of the Felon, the Town must answer them. *Stamf.* fol, 193. b. *Town to have the custody.* *Convict.* *Fugitive.*

And Note, The same Town may seise the Goods, in whatsoever place they may be found. But now by the *Statute*, made *An.* 13 *Edw.* 3. 30. the Town shall be eased of this charge; if they can declare, that any other doth detain the Goods, and that they have not, nor can have, the possession of them. *Stamf.* fol. 194. *b.* *Town may seise the Goods.* *Town eased.*

But of Lands, the Sheriff is chargeable with the Profits thereof; and not the Town. *Stamf.* fol. 194. *b.* *Sheriff.*

Pardon.

Quere, If the King do pardon the Offender, whether it will take away the corruption of Blood of those, who are born before the Pardon; as it doth of those, who are born since the Pardon. *Stamf.* fol. 151. *b.* *Corruption of Blood.*

If a man privily cut another mans purse, and take it from his person, it is not Robbery, because he was not put in fear: but, if it be above twelve pence, it is Felony; if it be under twelve pence, it is Petty-Larceny. *Crompt. pag.* 32. b.

How to attain the Forfeiture.

Writ of Eſcheat. IF a ſtranger enter upon Lands Eſcheated upon Attainder, the Lord may have a Writ of Eſcheat, or Enter. And the Writ muſt rehearſe the manner of the Felony; but generally, *quòd feloniam fecit.* H 46 *Edw.* 3. 4. *Stamf.* fol. 197, 198.

Enſeintments.

Plead to the Felony. IF a Woman be arraigned of Felony, it is no Plea for her to ſay, that ſhe is with childe; but ſhe muſt plead to the Felony; and, when ſhe is found guilty, ſhe may ſay, that ſhe is with childe, and thereupon the Marſhal ſhall be commanded to put her into a chamber, and cauſe women to ſearch her, whether ſhe be quick conceived with childe, or not: and if they find, that ſhe is quick with childe, ſhe ſhall be reſpited until her delivery; otherwiſe, to be hanged preſently. But whether ſhe be with childe or not, the Judgment muſt be entred preſently. And if, after ſhe is delivered, ſhe be with childe again, and ſhe object the ſame for prolonging of her life; the Judg, without further enquiry thereof, ought to command Execution; becauſe ſhe ſhall have the benefit of her Belly, but once. But, if the Judg will enquire thereof, it is to no other purpoſe, but to ſet a Fine upon the Marſhal for the keeping of her ſo remiſſly that ſhe hath had the company of a man. *Stamf.* fol. 198.

Search.

Venire facias tot matronas.

Judgment entred preſently.

Execution.

Gaoler fined.

The Commiſſion of the Peace.

JACOBUS, Dei Gratia, &c. perdilecto, & fideli, *Franciſco Bacon*, Militi, Domino Cancellario *Angliæ*, F. B. C. D. E. &c. Salutem.

1. Sciatis, quod aſſignavimus vos, conjunctim, & diviſim, & quemlibet veſtrum, Juſticiarios noſtros ad pacem noſtram in Com. *Devon.* conſervandam; Ac ad omnia, Ordinationes, Statuta, pro bono pacis noſtræ, & pro conſervatione ejuſdem, ac pro quieto regimine, & gubernatione populi noſtri edita, in omnibus, & ſingulis, ſuis Articulis, in dicto Com. noſtro (tam intra libertates, quam extra) juxta vim, formam, & effectum eorundem, cuſtodiendum, & eum cuſtodiri faciendum. Et ad omnes, contra Formam Ordinationum, vel Statutorum illorum, aut eorum alicujus, in Com. prædicto delinquentes caſtigandum, & puniendum, prout ſecundum formam Ordinationum, & Statutorum illorum, fuerit faciendum. Et ad omnes illos, qui alicui, vel aliquibus, de populo noſtro, de corporibus ſuis, vel de incendio do-

morum ſuarum, minas fecerint, ad ſufficientem ſecuritatem de pace, vel bono geſtu ſuo, erga nos, & populum noſtrum, inveniendam, coram vobis, ſeu alıquo veſtrûm, venire faciendum. Et, ſi hujuſmodi ſecuritatem invenire recuſaverint, tunc eos in priſonis noſtris (quouſque hujuſmodi ſecuritatem invenerint) ſalvò cuſtodiri faciendum.

2. Aſſignavimus etiam vos, & quoslibet duos, vel plures veſtrum (quorum aliquem veſtrum, A. B. C. D. &c. unum eſſe volumus) Juſticiarios noſtros, ad inquirendum, per Sacramentum proborum, & legalium hominum, de Com. prædicto (per quos rei veritas melius ſciri poterit) de omnibus, & omnimodis feloniis, veneficiis, incantationibus, ſortilegiis, arte Magicâ tranſgreſſionibus, forſtallariis, regratariis, ingroſſariis, & extortionibus quibuſcunque; Ac de omnibus, & ſingulis aliis malefactis, & offenſis (de quibus Juſticiarii Pacis noſtræ legitimè inquirere poſſunt, & debent) per quoſcunque, & qualitercunque, in Com. prædicto factis, ſive perpetratis, vel quæ in poſterum ibidem fieri, vel attemptari, contigerint; Ac de omnibus illis, qui in Com. prædicto in conventiculis, contra pacem noſtram, in perturbationem populi noſtri, ſeu vi armata, ierint, vel equitaverint, ſeu in poſterum

rum ire, vel equitare præsumpserint; Ac etiam de omnibus eis, qui ibidem, ad gentem nostram mayheimendam, vel interficiendam, in insidiis jacuerint, vel in posterum jacere præsumpserint; Ac etiam de Hostelariis, & aliis omnibus, & singulis personis, qui, in abusu ponderum, & mensurarum, sive in venditione victualium, contra formam Ordinationum, & Statutorum, vel eorum alicujus, inde, pro communi utilitate regni nostri Angliæ, & populi nostri ejusdem, editorum, deliquerunt, vel attemptaverunt, seu in posterum delinquere, vel attemptare, præsumpserit in Com. prædicto; Ac etiam de quibuscunque Vice-Comitibus, Ballivis, Seneschallis, Constabulariis, custodibus Gaolarum, & aliis Officiariis, qui in executione Officiorum suorum (circa præmissa, seu eorum aliqua) indebitè se habuerunt, aut in posterum indebitè se habere præsumpserint, aut tepidi, remissi, vel negligentes fuerunt, aut in posterum fore contigerint, in Com. prædicto. Et de omnibus, & singulis articulis, & circumstantiis, & aliis rebus quibuscunque, per quosunque & qualitercunque, in Com. prælicto, factis, sive perpetratis, vel quæ in posterum ibidem fieri, vel attemptari contigerint, qualitercunque præmissorum, vel

eorum alicujus, concernentibus plenius veritatem. Et ad indictamenta quæcunque, ſi coram vobis, vel aliquibus veſtrum, capta, ſive capienda, aut coram aliis, nuper Juſticiariis Pacis in Com. prædicto facta, ſeu capta (et nondum terminata) inſpicienda. Et ad proceſſus inde, verſus omnes, & ſingulos, ſic indictatos, vel qui coram nobis in poſterum indictari contigerint (quousq, capiantur, reddant ſe, vel utlagentur) faciendum, vel continuandum. Et ad omnia, & ſingula, felonias, veneficia, incantationes, ſortilegia, artes Magicas, transgreſſiones, forſtallarios, regratarios, ingroſſarios, extortiones, conventicula, indictamenta prædicta, cæteraque omnia, & ſingula, præmiſſa, ſecundum leges, & Statuta regni noſtri *Angliæ*, (prout in hujusmodi caſu fieri conſuevit, & debuit) audiendum, & terminandum, & ad eoſdem deliquentes, et quemlibet eorum, pro delictis ſuis, per fines, redemptiones, amerciamenta, foriſfacturas, aut alio modo (prout ſecundum legem, & conſuetudinem regni noſtri *Angliæ*, aut formam Ordinationum, vel Statutorum prædictorum fieri conſuevit, aut debuit) caſtigandum, & puniendum.

Proviſo ſemper, quod ſi caſus difficultatis ſuper determinatione aliquorum

quorum quibus duobus, vel pluribus veſtrum, evenire contigerit; Tunc ad judicium inde reddendum, niſi in præſentia unius Juſticiariorum noſtrorum de uno, vel de altero Banco, aut Juſticiariorum noſtrorum, ad Aſſizas in Com. prædicto capiendas, aſſignaterum, coram vobis, vel de aliquibus duobus, vel pluribus veſtrum, non procedatur.

Et ideo vobis, & cuilibet veſtrum, mandamus, quod, circa cuſtodiam Pacis, Ordinationum, Statutorum, & omnium, & ſingulorum cæterorum præmiſſorum, diligenter intendatis, & ad certos dies, & loca, quæ vos, vel aliqui hujusmodi duo, vel plures veſtrum (ut prædictum eſt) ad hoc provideritis, ſuper præmiſſis faciatis inquiſitiones, & præmiſſa omnia, & ſingula audiatis, & terminetis, ac ea faciatis, & expleatis forma prædicta, facturi inde quod ad juſtitiā pertinet, ſecundum legem, & conſuetudinem regni noſtri *Angliæ*. Salvis nobis amerciamentis, & aliis, ad nos inde ſpectantibus.

Mandamus etiam, tenore præſentium, Vice-Comiti noſtro *Devon.* quod ad certos dies, & loca (quæ vos, vel aliqui duo, vel plures veſtrum (ut prædictum eſt) ei ſciri feceritis) venire faciat coram vobis, vel hujusmodi duobus, vel pluribus veſtrum

(ut dictum est) tot, & tales probos, & legales homines, de Balliva sua (tam intra libertates, quam extra) per quos rei veritas in præmissis melius sciri potetit, & inquiri.

3. Assignavimus denique te, præfatum EDOARDUM, Comitem *Bathon.* Custodem Rotulorum Pacis nostræ in dicto Com. nostro. Ac propterea tu, ad dies, & loca prædicta, brevia, præcepta, processus, & indictamenta prædicta, coram te, & dictis sociis tuis, venire facias, ut ea inspiciantur, & debito modo terminentur, sicut prædictum est. In cujus rei testimonium, &c.

Of Forcible Entries.

IF one man, or more, shall come weaponed to an House, or Lands, and shall violently enter thereinto; much more, if he shall there offer violence to the person in possession; and most of all, if he shall expel the other out of his possession: This proves a forcible Entring. Lamb. *pag.* 142.

So he, that entreth in a peaceable shew, the door being but

but latched, and yet, when he is come in, useth violence, and throweth out such as he findeth in that House; because his Entry is not consummated by the only putting of his foot over the threshold, but by his action, and demeanour, when he is come into the House. Lamb. pag. 143.

If three, or four, who come in one company to make such a forcible Entry, and onely one of them doth use force, and violence; yet are all the rest guilty of this force with him.

And, whether a man did actually use force in his Entry, or do come so readily appointed and arraied for that, that other men may be reasonably afraid that he mindeth to make his way with force, rather then he will fail of his desired purpose; That seemeth to be a forcible Entry. Lamb. pag. 143.

But a forcible Entry can-

not be adjudged against a man, without an actual Entry be also made by him. Lamb. *pag.* 144.

Of Forcible Holdings.

IF a Justice of Peace come to an House, supposed to be holden with Force, and there shall find but one person, who keepeth the door shut against him, and will not suffer him to enter; This is a forcible Holding. Lamb. *pag.* 145.

If a man, that is entred into an House, will bestow men with force, and Arms, in some other House, or place (not far distant), to the intent they may be ready to assault such, as shall make an attempt of entry upon him: This is a detaining with Force.

Or, if a Disseisour of an House, or Land, shall force-stall the way of the Disseised with force, and Arms; so that he dare

dare not enter, or approach, for fear of death: This is detaining with Force.

If a man have a Rent, or Common, in Land, and he is so forcibly resisted by the Tenant of the Land; that he dare not to distrain for the one, nor to use the benefit of the other: This is an holding with force, punishable by the Statute. Ass. 29 *pl.* 49. Lamb. *pag.* 146.

But all that, which is here said, must be taken to be said of a forcible detaining of the Possession, and not of a man's Person. Lamb. *pag.* 146.

The duty of the Justice of Peace, in case of a Forcible Holding.

The Justice of Peace ought not to stop, or stay at all, about the right, or wrong of his Title, that entreth; for the Statute of 5 Rich. 2. doth, without exception, prohibite all Entries

tries with Force. And the Statute of 8 Hen. 6. permitteth no forcible Holdings; but only where three years poſſeſſion have gone before.

For if A. ſhall diſſeiſe B. of his Land, and B. doth enter again, and put out A. with force, A. ſhall be reſtored to his poſſeſſion, although his firſt entry were utterly wrongfull. Lamb. *pag.* 146.

Concerning Reſtitution.

NO Reſtitution can be made but onely upon enquiry by Jury. Lamb. *pag.* 151.

If a man be indicted upon the Statute, of 8 H. 6. for Force, without ſaying manu forti, or cum multitudine; the Bill would be inſufficient. Lamb. *pag.* 142.

It is not altogether requiſite to be found (for the puniſhment of the Offenders by Impriſonment, and Fine) that the

the party proved, is actually thrown out of possession by them: (for the only holding with force will suffice for the purpose.) Yet in other Cases, for the having of Restitution by the Statute, this putting out must of necessity be found by the enquiry. As, if it be presented, that you were seised, untill A. entred upon you with Force, you shall never have Restitution by it; because, it may be, he entred forcibly, and yet you were not put out by him. But, if it be found, you were seised, untill A. put you out with Force, and that he holdeth in with Force, you shall be restored to your possession again. Lamb. *pag.* 153.

And this putting out must be understood of an House, or Land onely, and not of a Rent, Common, Advowson, or such like, whereunto an actual Entry cannot be made. Lamb. *pag.* 153.

More-

Moreover, it is not enough that the putting out be found, unless the Indictment do also contain adhuc extra-tenet, that he holdeth the other out of possession; for else it may be thought, that the other hath got in again, and so Restitution is needless, Lamb. *pag.* 153.

Again, this Restitution ought to be made to him, that was put out, and to none other: for, if the Father be put out with force, and die after the Enquiry, before Restitution, his Heir shall not have Restitution upon it. Lamb. *pag.* 154.

If it happen, that two Joint-Tenants of Land be put out with Force, and one of them onely will sue for Restitution, he ought to have it made unto him.

If a Lessee, or any Copy-holder, will be aided by way of Restitution, the enquiry must find the Lessour, or Lord, to be forcibly put out, and expulsed, that

that, by his Restitution, the Lessée, or Copy-holder, may be restored also. But now, by the Statute of 21 Jacobi, *pag.* 15. Restitution may be made unto the Tenant himself.

After the Entry, and detaining with force presented, the Justice of Peace may, either by himself, or by directing his Precept to the Sheriff, under the Teste of himself alone, restore the party presented to his possession.

Traverse.

SUch persons, as the Justice of Peace doth find, and sée continuing the Force, at his coming to view the Force, those he may immediately commit unto the Goal, as convict of that Offence, upon his view. But, upon the Enquiry, I sée not, that the Justice of Peace hath any other power committed unto him, then to make

make Reſtitution only. And that he may do, notwithſtanding this offer of Traverſe.

And if he will not ſo do, the ſafeſt way is, to deliver or certifie the Preſentment into the King's Bench, and refer the farther proceeding therein to their power. Lamb. *pag.* 158.

A man is indicted for entring with force, and holding with force: and it is found, that he entered with force, but he did not detain with force; yet the party ſhall be reſtored. Crompt. *Juſtice of Peace*, fol. 109.

A Mittimus *for holding with Force upon the Juſtice's view.*

MEmorandum, quod octavo die menſis *Januarii*, anno regni Domini noſtri CAROLI, &c. queſtus eſt mihi, *Edmundo Prideaux*, uni Juſticiariorum Domini Regis, ad pacem in dicto Com. conſervand. aſſignat. quidam A. B. de &c. in dict. Com. Yeoman,

Yeoman, quod C. D. de M. prædict. & nonnulli alii pacis dicti Domini Regis perturbatores ignoti, in domum manſionalem ipſius A. B. in Com. prædict. manu forti ingreſſi ſunt, & ipſum A. B. diſſeiſeverunt, ac eandem manu forti, & armata potentia, adhuc tenent: ac proinde petit à me ſibi in hac parte remedium apponi. Qua quidem querimonia & petitione audita, ego, præfatus *Edmundus Prideaux*, immediate ad dictam domum manſionalem perſonaliter acceſſi, ac in eadem domo ad tunc inveni præfatum C. D. & quoſdam E. F. G. H. &c. domum illam, vi & armis, manu forti, & armata potentia, viz. arcubus, & ſagittis, gladiis, pugionibus, galeis, & loricis, tenentes, contra formam Statuti in Parliamento Domini RICHARDI nuper Regis *Angliæ*, ſecundi, anno Regni ſui decimo quinto, tento, proviſi; ac contra formam diverſorum aliorum Statutorum. Ac propterea ego, præfatus *Edmundus Prideaux*, prædictos C. D. E. F. G. H. ad tunc, & ibidem, arreſtavi, & proximæ Gaolæ dicti Domini Regis, apud C. in dicto Com. duci feci; ut de dicta manu forti tentione per Viſum, & Recordum meum, convictos, ibidem moraturos, quouſque fines dicto Domino Regi pro tranſgreſſionibus ſuis

prædictis

prædictis fecerunt. Dat. apud W. prædict. sub Sigillo meo, die, & anno, supra dictis.

Stat. 5 Rich. 2. *cap.* 5. Is for such as enter with force, and strong hand, or multitude of people, and are punishable by Imprisonment, and Ransom.

Stat. 5 Rich. 2. *cap.* 2. If any hold forcibly, after entry made in peaceable manner, and are punishable by Imprisonment, untill they make Fine, and Ransome.

Stat. 8 Hen. 6. *cap.* 9. If any enter with Force, and hold peaceably: or, if any shall enter peaceably, and hold forcibly.

A *Mittimus* for holding with Force upon the Justice's view, *&c.*

EDmund Prideaux Esquire, one of the Justices of the Peace of our Sovereign Lord the KINGS Majesty, within the County of Devon; To the Keeper

Keeper of his Majestie's Goal at the Castle of Exon. in the said County, and to his Deputy, and Duputies there, and to every of them, Greeting. Whereas, upon complaint made unto me this present day, by A. B. of W. in the said County, Yeoman, I went immediately unto the House of the said A. B. in W. aforesaid, and there found C. D. E. F. and G. of W. aforesaid, Labourers, forcibly, and with strong hand, and armed power, holding the said House, against the Peace of our Sovereign Lord, and against the Form of the Statute of Parliament, thereof made in the 15th. year of the Reign of our late King, *Rich.* the Second. Therefore I send you, by the bringers hereof, the bodies of the said C. D. E. F. and G. convict of the said forcible holding by mine own View, Testimony, and Record, commanding you, in his Majestie's

Majeſtie's Name, to receive them into your ſaid Gaol, and there ſafely to keep them, untill ſuch time, as they ſhall make their Fines to our ſaid Sovereign Lord, for the ſaid Treſpaſs; and ſhall be thence delivered by the Order of the Law of the Land. Hereof fail you not, upon the peril that may follow thereof. Given at Weſt. aforeſaid, under my Seal, the day of, &c.

A Precept *to enquire of a Force.*

Edwardus Fowel, Miles, unus Juſticiariorum Domini Regis, ad Pacem in Com. *Devon.* conſervandam aſſignat. *&c.* Vice-Comiti ejuſdem Com. Salutem. Ex parte dicti Domini Regis tibi mando, & præcipio, quod venire facias coram me apud ℂ. in Com. prædict. viceſimo die *Septembris* proximo futuro viginti quatuor probos, ſufficientes, & legales homines de viceneto de ℂ prædicto; quorum quilibet habeat quadraginta ſolid. terrarum, & Tenement. vel redditum per annum, ad minus ultra repriſas, ad

inquirend.

inquirend. ſuper Sacramentum ſuum pro dicto Domino Rege, de quodam ingreſſu manu forti in Meſſuagium cujuſdam, J. B. apud C. prædict. contra formam Statuti Domini *Henrici* nuper Regis *Angliæ*, Sexti, anno Regni ſui octavo, tento, editi, ut dicitur. Et videas, quod ſuper quemlibet Juratorum, per te in hac parte impanellendorum, vigint. ſolid. de exitibus, ad præfatum diem retornes; Et hoc nullatenus omittas, ſuper pœna viginti librarum; quam noveris te incurſurum; ſi in executione præmiſſorum tepidus, aut remiſſus fueris. Et habeas ibi tunc hoc Præceptum. Teſte me, prefato *Edw. Fowel*, apud W. decimo die *Maii*, anno Regni Domini noſtri *Caroli*, Dei Gratia, *Angliæ*, *Scotiæ*, *Franciæ*, & *Hiberniæ* Regis, Fidei Defenſoris, &c.

The form of an Inquiſition upon a Force.

INquiſitio pro Domino Rege capta apud C. in Com. *Devon.* viceſimo nono die *Julii*, anno Regni Domini noſtri *Caroli*, Dei Gratia, *Angliæ*, *Scotiæ*, *Franciæ*, & *Hiberniæ* Regis, Fidei Defenſoris, &c. decimo nono, per Sacramentum J. B. C. D. E. F. G. H. I. &c. coram *Ed. Fowel*, Milite, uno Juſticiariorum

ciariorum Dicti Domini Regis ad pacem in dicto Com. conſervandam, necnon ad diverſas Felonias, Tranſgreſſiones, & alia Malefacta in eodem Com. perpetrata audiend. & terminand. aſſignatorum. Qui dicunt, ſuper Sacramentum ſuum, quod **L. M.** de **W.** prædict. **Yeoman**, diu, legitime, & pacifice ſeiſitus fuit in dominio ſuo, ut de feodo, de, & in uno Meſſuagio, &c. cum pertinentiis in **W.** prædict. & poſſeſſionem, & ſeiſinam ſuam prædictam continuavit, quouſque **N.** & **O.** de **C.** prædict. & alii malefactores ignoti, primo die *Julii*, ultimo elapſo, vi, & armis, viz. cum baculis, gladiis, arcubus, & ſagittis in Meſſuagium prædictum, &c. intraverunt, ac ipſum **L. M.** inde diſſeiſiverunt, & manu forti expulerunt, & eundem **L. M.** ſic diſſeiſitum, & expulſum ab eodem Meſſuagio, &c. à prædicto primo die *Julii*, uſque ad diem captionis hujus inquiſitionis, cum hujuſmodi fortitudine, & potentia armata, extra tenuerunt, & adhuc extra tenent, in magnam Pacis dicti Domini Regis perturbationem, ac contra formam Statuti, in Parliamento Domini *Henrici* nuper Regis *Angliæ* Sexti, anno Regni ſui octavo tento, in tali caſu editi, & proviſi: ubi nullus eorum, nec aliquis alius, cujus ſtatum ipſi, aut aliquis

quis eorum, habuerunt, aut habuit aliquid in eadem Meſſuagio, *&c.* aut in aliqua indè parcella habuerunt, aut habuit, infra tres annos proximos; ante ingreſſum ſuum prædictum. neque alio tempore præcedenti, ad notitiam Juratorum prædictorum.

A Warrant *to the Sheriff to make Reſtitution, if the Juſtice will not make it himſelf.*

EDw. *Fowel*, Miles, unus Juſticiariorum, *&c.* Vice-Comiti, *&c.* Cùm, per quandam inquiſitionem patriæ, coram me apud W. in Com. prædicto, viceſimo nono die *Julii*, &c. ſuper ſacramentum A. B. C. D. E. F. G. H. I. &c. ac per formam Statuti, de ingreſſibus manu forti factis, in tali caſu proviſ. compertum fuit, quod N. & O. & alii, *&c.* primo die *Julii*, &c. in quoddam Meſſuagium, *&c.* L. M. in W. prædict. vi, & armis ingreſſi ſunt, ac ipſum L. M. inde tunc, manu forti, diſſeiſiverunt, & expulerunt, & prædict. L. M. ſic expulſum à prædicto Meſſuagio, *&c.* à prædicto primo die *Julii*, &c. uſque ad diem captionis inquiſitionis prædict. manu forti, & cum potentia extra

extra tenuerunt, prout, per inquiſitionem prædictam, plenius liquet de Recordo. Ideo ex parte dicti Domini Regis, tibi mando, & præcipio, quòd (ad hoc debitè requiſitus) unà cum Poſſe Comitatus tui (ſi neceſſe fuerit) accedas ad Meſſuagium, & cætera præmiſſa, ac eadem cum pertinentiis reſeiſire facias, & præfatum *L. M.* ad, & in, plenam poſſeſſionem ſuam indè, prout ipſe ante ingreſſum prædictum fuerat ſeiſitus, reſtitui, & mitti facias, juxta formam dicti Statuti. Et hoc nullatenus omittas, periculo incumbente. Teſte me, præfato *Edm. Fowel*, apud *W.* &c.

A Cer-

A Certificate of the Presentment, or Verdict of the Jury, may be done, and made by the Justice of Peace, by way of a Letter: and inclosing therein the said Presentment of the Jury, or the said Record of the Justice; except it be removed by Certiorari, and then the Form may be after this manner.

The Return of a *Certiorari*, to remove an *Indictment*, may be thus framed.

First, write upon the back-side of the Writ Certiorari these, or the like words,

Executio istius Brevis patet in quâ-dam schedula huic Brevi annexa,

And that Schedule may be thus; Ego *Edm. Fowel*, Miles, unus Justiciariorum dicti Domini Regis ad pacem in Comitatu

dict. conservand: necnon ad diversas Felonias, &c. assignat. virtute istius Brevis mihi deliberati, Indictamentum illud (unde in dicto Brevi fit mentio) una cum omnibus, idem Indictamentum tangentibus, in Cancellariam dicti Domini Regis distincte, & aperte, sub Sigillo meo certifi In cujus rei testimonium ego præfatus *Edm. Fowel*, his præsentibus Sigillum meum apposui. Dat. decimo d *Augusti*, An. Regni *Caroli*, &c.

3. Then take the Record o the Indictment, and close i within the Schedule; and Sea them both up together.

Of Riots.

A Riot is an Assembly three, or more, perso disorderly coming together, commit some unlawful act; to beat a man, or to enter up his possession, or the like.

One Justice of Peace alo cannot punish it, otherwis then by binding them to t good behaviour, and to comm the

them, in case they refuse to give Sureties for it.

By the Statute of 13 Hen. 4. *cap.* 7. two Justices of the Peace, and the Sheriff, may raise the power of the County to arrest Rioters, and to record the Riot upon their true view. And, in case, the Rioters be departed, before their coming, then two Justices of the Peace are to enquire thereof, within one Moneth after, and may hear, and determine the same; And, if the truth thereof shall not be found by the Enquiry, then the Sheriff, and two Justices of the peace, are to certifie the same before the King, and his Council, with all the deeds, and circumstances thereof.

All the King's people are to be assistant to those Justices, and Sheriff, being required, upon pain of Imprisonment, Fine, and Ransome. Statute 2 Hen. 5. *cap.* 8.

If the ſame Riot be not found, by reaſon of Maintainance, then the Sheriff, and Juſtices, are to certifie the Names of thoſe Maintainers. Stat. 19 Hen. 7. *cap.* 13.

If they find a Riot, when they come to the place, they muſt proceed to puniſh the Offenders. And this they ought to do by Arreſt, if they be preſent. In the execution of which Arreſt, they may juſtifie the Beating, Wounding, or Killing of the Offenders, that ſhall reſiſt them. And, after the Arreſt made, the power of the County ought to aid the Sheriff, for conveying of the Rioters to the Gaol. Lamb. *pag.* 310.

The Arreſt thus made, thoſe Juſtices, and Sheriff, ought to make Record, in writing, of that, which they ſee, and find. And this Record ought to be formal, and certain, as well for the Time, and Place; as

for

for the Number, Weapons, Manner, and other Circumstances; because the Offenders cannot traverse the same. Lamb. *pag.* 317.

The Record *of a Riot.*

MEmorandum, quòd primo die *Martii*, Anno Regni regis Domini nostri *Caroli*, Dei Gratia, *&c.* Decimo nono: nos *Johannes Bampfield*, Baronettus, & *Willielmus Fry*, Justiciarii Regis nunc ad pacem in Com. prædict: conservand. necnon ad diversas Felonias, Transgressiones, & alia malefacta, in eodem Com. perpetrata, audiend. & terminand assignati, & *Nicolaus Martin* Miles, ad tunc Vicecomes ejusdem Comitatûs, ad querimoniam W. B. de C. in Com. prædict. Yeoman, in propriis personis nostris accessimus ad domum Mansionalem ipsis W. B. de C. prædict. Et ibidem invenimus quosdam D. E. F. G. H. & alios malefactores, & pacis dicti Domini Regis perturbatores ignotos, ad numerum octo personarum, modo guerrino arraiatos, *viz.* cum baculis, gladiis, arcubus, & sagittis riotose, & illegitime, aggregatos, & eandem do-

mum ſic cuſtodientes, in magnam perturbationem pacis dicti Domini Regis, & populi ſui terrorem, & contra formam Statuti in Parliamento Domini *Henrici*, nuper Regis *Angliæ*, quarti, Anno Regni ſui decimo tertio, editi. Et ideo nos præfati *Johannes Bumpfield*, *Willielmus Fry*, & *Nicolaus Martin*, corpora prædict. D. C. F. G. H. ad tunc arreſtavimus, ac proximæ Gaolæ dicti Domini Regis in Com. prædict. duci fecimus per Recordum noſtrum de Transgreſſione prædicta convictos in præſentia noſtra; ibidem moraturos, quouſque Finem dicto Domino Regi pro Transgreſſione ſua prædicta fecerunt. In cujus rei teſtimonium, huic Recordo noſtro Sigilla noſtra appoſuimus. Dat. apud C. prædict. die, & anno, ſupradictis.

The

The *Mittimus* for committing the *Rioters* to the Goal may be in the Form of the *Mittimus* for a Forcible Entry, as before, with very little alteration.

THis Record ought to remain with them: and they, and none other Justices, shall imprison the Rioters, and assess their Fines. Lamb. *pag.* 317.

But if these Rioters shall escape after these Justices do come and see the Riot, then can they neither arrest them at any other time, nor award Process against them upon that Record, which they make: But the Record must be sent into the Kings Bench, and from thence Process made upon it, and thereupon to be fined, and they shall not Traverse the Record. Lamb. *pag.* 218.

If two Justices of Peace (without the Sheriff) shall

see certain persons in doing a Riot, they may cause them to be arrested, and may make Record of that offence, whereof the Parties shall be for ever concluded. *Fitz.* Justice of the Peace, *fol.* 117.

But Lambert doubts it, unless it be in a Judicial place, as the Sessions: and so far is the Book. 7 Edw. 4. *fol.* 18.

Of the Enquiry of a Riot.

ALbeit these Justices do not go to see the Riot; yet they may enquire thereof, within the Moneth after: and if these Justices do charge the Jury within the Moneth, and do give day unto them for yielding their Presentment after the Moneth, the Statute is not offended by it, whereby they shall lose an hundred pounds. Lamb. *pag.* 223.

The truth of the matter being

ing found thus by Enquiry, those Justices have authority by the former Statute, not onely to make out Process against the Offenders under their own Teste; but also to commit them to Prison, till they make their fine, and to deliver them after payment of the same, or upon Sureties taken for it; Or otherwise to receive their Traverse, and thereupon, if the matter will serve, to discharge, and dismiss them.

Certificate, if the Matter be not found.

If by this Enquiry the Riot be not found, either through the perverse maliciousness of the Jurors, or by the unlawfull maintainance, or countenance of other men, that put themselves into the cause; yet ought there, within one Moneth after the Enquiry, a Certificate to be made, as well

of the names of the Principal Offenders, and of so much of the Fact, and Circumstances thereof, as may by any wayes, or means, appear: as also of the names of such maintainers, and of their misdemeanours in this behalf, Lamb. pag. 323.

And the Sheriff must joyn in this Certificate, and be also present at the Enquiry; this Certificate is only of the nature of a Declaration, or Indictment, and may be Traversed.

If two Justices of the Peace go, and see a Riot, and other two Justices do make the Enquiry, then the one sort, or the other of them, with the Sheriff, or Under-Sheriff, may make the Certificate. *Lamb.* pag. 325.

Concerning

Concerning the Penalty of an hundred pounds.

NO Justice, dwelling out of the County, where the Riot is, can be charged; although he be next to the place.

If any other Justices (that be not next to the place) shall execute the Statute, that will excuse those Justices, that be next.

If one, or two Justices of the Peace, shall come to execute the Statute, and the Sheriff, or Under-Sheriff, do not come at all, yet those Justices shall be excused, for their one hundred pounds.

The Justices must send for the Sheriff, or Under-Sheriff, and, if he come not, the Justices shall be fined, if they arrest not the Rioters, or do not all that, which, without the Sheriff, they are here in, by

by any way, authorized to perform. Lamb. *pag.* 127.

Note. That the Parties agreement is no discharge of the Inquisition, but the Justices must enquire, and make Proclamation; if any will inform for the King. Pult. *De Pace*, fol. 29. Sect. 25.

For the agreement of the Parties is no satisfaction to the King, for his Fine for the Peace broken, whereby the Parties may be eased of their deserved punishment. Pult. *De Pace*, fol. 29. Sect. 125.

In an Indictment of Riot, the Words in terrorem populi seem to be material. Lamb. *pag.* 178. Brook, *Riot*, 3.

Process

Process of the Sessions.

Process

1. The usual Process upon Indictment of *Treason*, or *Felony*, is
   1. A *Capias*.
   2. An *Alias Capias*.
   3. An *Exigi facias*.

   And in every such *Capias*, there ought to be three weeks space, between the Date, and the Return of the Writ, by *Statute* 25 *Edw.* 3. *cap.* 14.

   If the Indicted be named *nuper* of another County, the second *Capias* shall be into that County Returnable three Months after, and proclaimed in that County, by *Statute* 8 *Hen.* 6. 10.

2. The common Process in other Presentments, not being *Felony*, nor set forth in *Statutes*, be
   1. A *Venire facias*: and if, upon the *Venire facias*, the Party be returned *Sufficient*; then a
   2. *Distringas* must go out; and the same Process infinite, untill he come in.

   But, if a *Nihil habeat* be returned at first against him, then
   2. A *Capias*.
   3. An *Alias Capias*.
   4. A *Pluries Capias*.
   5. An *Exigi facias*.

These Proceſſes *may be made, either in the Name of the* Juſtice of Peace, *or in the Name of the* King, *with the* teſte *of the* Juſtice of Peace; *as in these Examples following.*

A *Venire facias.*

Devon. WIllielmus Fry, Armiger, unus Juſticiariorum Domini Regis, ad pacem, necnon ad diverſas Felonias, Transgreſſiones, & alia malefacta, in Com. prædict. audiend. & terminand. aſſignatus; Vice-Comiti Com. prædict, Salutem. Præcipio tibi, quod non omittas, propter aliquam libertatem, in Balliva tua, quin eam ingrediaris; & *Venire facias* coram me apud C. in dict. Com. vicesimo die *Junii* proximè futur. A. B. de D. Yeoman, ad reſpondend. dicto Domino Regi, ſuper diverſis articulis, ſuper eum præſentatis, & habeas ibi tunc hoc Præceptum. Teſte me, præfato *Will. Fry*, apud *Yorty* decimo die *Junii*, Anno Regis Domini noſtri *Caroli*, Dei Gratia, *&c.* decimo ſeptimo.

A *Di-*

A *Distringas.*

Johannes Rampfield, Baronettus, unus Justiciariorum Domini Regis, ad pacem, necnon ad diversas Felonias, Transgressiones, & alia malefacta, in Com. predict. perpetrata, audiend. & terminand. assignatus; Vice-Comiti Com. prædict. Salutem. Præcipio tibi, quod non omittas, propter aliquam liberatem in Balliva tua, quin eam ingrediaris; & distringas A. B. de C. Gen. per omnes terras, *&c.* Et quod de exitibus eorum respondeas, *&c.* Ita, quod habeas corpus ejus coram me, apud D. quinto die *Augusti* proximè futuro, ad respondend. dicto Domino Regi super diversis articulis, super eum præsentatis, & habeas tibi tunc hoc Præceptum. Teste me, præfato *Johanne Rampfield*, apud *Polymore*, primo die *Augusti*, Anno Regni, *&c.* *Devon.*

Or

Or, that may be in the Name of the King, as other Riots *are, with the* Teſte *of the Juſtice of Peace, thus:*

A *Capias.*

CAROLUS, Secundus Dei Gratia, *Angliæ, Scotiæ, Franciæ,* & *Hiberniæ* Rex, Fidei Defenſor, &c. Vice Comiti *Devon.* Salutem. Præcipimus tibi, quod non omittas propter aliquam libertatem in Balliva tua, quin eam ingrediaris, & capias J. D. de B. in Com. tuo. Yeoman, &c. ſi inventus fuerit in Balliva tua; & eum ſalvò cuſtodias (aut cuſtodiri facias) ita, quod habeas corpus ejus coram Cuſtod. pacis noſtræ, necnon Judiciariis noſtris, ad diverſas Felonias Tranſgreſſiones, & alia malefacta, in eodem Com. tuo perpetrat. audiend. & terminand. aſſignat. apud Caſtrum *Exon.* in Comitatu tuo, die *Martis* proxim. poſt Clauſ. *Paſchæ* ad reſpondend. nobis de diverſ. Tranſgreſſ. Contempt. & Offenſis, de quibus ipſe Indictatus exiſtit. Et habeas tibi tunc

tunc hoc Breve. Teſte *Nicolao Martin*, Milite, apud C. ſexto die *Julii*, Anno Regni noſtri 18.

The Capias aliàs *runneth in the ſame Form, with a little alteration, thus.*

CAROLUS, Secundus Dei Gracia, &c. Vice-Com. &c. Præcipimus tibi, ſicut aliàs tibi præcepimus, quod non omittas, &c. *verbatim, ut ſupra.*

The Pluries Capias *is ſuch.*

CAROLUS Secundus, Dei Gratia, &c. Vice-Com. &c. Præcipimus tibi, ſicut pluries tibi præcepimus, quod non omittas, &c. *ut ſupra.*

The Form of the Exigent.

CAROLUS Secundus, Dei Gratia, &c. Vice-Com. &c. Præcipimus tibi quod exigi facias, T. D. de W. in Com. tuo, **Yeoman**, quouſque, ſecundum legem & conſuetudinem Regni Noſtri *Angliæ*, utlagetur, ſi non comparuerit; &, ſi comparuerit, tunc eum Capias, & ſalvo cuſtodiri facias; quod

quod ita habeas corpus ejus coram Justiciariis pacis Nostræ, necnon Justiciariis Nostris, ad diversas Felonias, Transgressiones, & alia malefacta, in eodem Com. perpetrat. audiend. & terminand. assignat. ad Generalem Sessionem Pacis (if he be Indicted at the Sessions) Comitatus tui proxim. post festum Sancti *Michaelis Archangeli* proxim. futuri tenend. ubicunque in eodem Comitatu teneri contigerit, ad respondend. nobis de diverss. Transgress. Contempt. & Offensis, de quibus ipse indictatus existit, & habeas ibi tunc hoc Breve. Teste *Henrico Walvonde*, Arm. apud *Brodefield*, 8. die *Septembris*, Anno Regni Nostri 19.

A TABLE

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